



Broadcasting Decision CRTC 2008-146

Ottawa, 24 July 2008

Harmony Broadcasting Corporation
Winnipeg, Manitoba

Public Hearing in Winnipeg, Manitoba
4 June 2008

CJWV-FM Winnipeg - Revocation of licence

*In this decision, the Commission **revokes** the broadcasting licence for CJWV-FM Winnipeg held by Harmony Broadcasting Corporation.*

Introduction

1. In Broadcasting Decision 2007-37, the Commission imposed six mandatory orders on Harmony Broadcasting Corporation (Harmony), licensee of the campus/instructional radio station CJWV-FM Winnipeg. These mandatory orders, which resulted from repeated non-compliance, directed the licensee to comply at all times with the requirements set out in sections 2.2(8), 8 and 9 of the *Radio Regulations, 1986* (the Regulations) regarding the submission of logger tapes and other information, the broadcast of Canadian music, and to comply with the conditions of CJWV-FM's licence concerning the broadcast of news, music drawn from content category 3 and educational programming.
2. Harmony subsequently failed to provide logger tapes as requested by the Commission on two occasions. This represented an alleged breach of one mandatory order and also hindered the Commission's ability to verify if the licensee was in compliance with the other mandatory orders, the Regulations, its conditions of licence and the Commission's Campus Radio Policy as set out in Public Notice 2000-12.
3. The entity known as Harmony Broadcasting Corporation was dissolved in May 2007, and the station ceased to operate in October 2007. The Corporation has since been revived and an agreement was struck between Mr. Franc Capozzolo and the Corporation that would result in Mr. Capozzolo being replaced as the sole member of the Corporation by Mr. David Asper. Mr. Asper would appoint a new Board of Directors.
4. The Commission called Harmony to the 4 June 2008 public hearing (the Public Hearing) to show cause why additional mandatory orders requiring the licensee to comply with the Regulations and its conditions of licence should not be issued, why the Commission should not suspend or revoke Harmony's licence under sections 9 and 24 of the *Broadcasting Act*, and why prior Commission approval for what would appear to be a change in effective control of the licensee is not required. In the event that prior approval is required, the Commission indicated that it expected the licensee to show cause as to

why the Commission should grant such approval.

5. At the start of the Public Hearing, another group that included Peter Bjorklund, Paula Bjorklund and Manjit Blake argued that they were the true directors of Harmony and should properly be the respondents at the Public Hearing. After hearing arguments from the parties, the Commission ruled that the group that included Mr. Capozzolo (which also included Mr. Asper and the new Board of Directors appointed by Mr. Asper) should act as the respondent for the present process and the group that included Manjit Blake should be designated as interveners. This ruling was based on the fact that Mr. Capozzolo appeared to be the sole member of Harmony from the time that the licence for CJWV-FM was last renewed and was responsible for operating the station at the September 2006 Winnipeg public hearing that resulted in the mandatory orders attached to Broadcasting Decision 2007-37. Accordingly, the Commission found that the group that included Mr. Capozzolo was the appropriate party to address the non-compliance issues that are at the centre of the current proceeding.
6. The group that included Peter Bjorklund, Paula Bjorklund and Manjit Blake also requested that the Commission issue subpoenas to various persons to appear at the Public Hearing. The Commission issued its response to the request for subpoenas in a letter dated 7 July 2008.
7. The complete record of this proceeding is available on the Commission's website at www.crtc.gc.ca. After considering the application, all interventions, the arguments at the Public Hearing and the requested filings subsequent to the Public Hearing, the Commission considers that this proceeding raises the following issues:
 - Was CJWV-FM in compliance with the mandatory orders set out in Broadcasting Decision 2007-37 and in compliance with the Regulations, and were its operations consistent with the Commission's Campus Radio Policy?
 - In light of the Commission's finding on the compliance issues set out above, what regulatory action by the Commission would be appropriate?

Compliance

Summary of current mandatory orders

8. In summary, the mandatory orders that the Commission imposed in Broadcasting Decision 2007-37 require Harmony to:
 - Mandatory Order 1 – submit, at the Commission's request, program logs and clear and intelligible tape recordings or other exact copy of all matter broadcast (logger tapes);
 - Mandatory Order 2 – submit, on or before 30 November of each year, annual returns for the year ending the previous 31 August, and submit self-assessment reports, music lists and responses to other inquiries from the Commission at its request;

- Mandatory Order 3 – devote, in each broadcast week, 35% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety;
 - Mandatory Order 4 – devote, during each broadcast week, a minimum of 5% of its musical sections to musical selections from content category 3 (Special Interest Music);
 - Mandatory Order 5 – devote at least 4% of its programming during each broadcast week, excluding vacation periods, to News; and
 - Mandatory Order 6 – devote, during each broadcast week, at least two hours of programming to formal educational programming that provides academic instruction.
9. The Commission notes that requirements set out in Mandatory Order 1 are also contained in sections 8(4), 8(5) and 8(6) of the Regulations, the requirements set out in Mandatory Order 2 are also contained in section 9 of the Regulations, and the requirement set out in Mandatory Order 3 is also contained in section 2.2(8) of the Regulations.

Compliance with Mandatory Order 1

10. The Commission requested program logs and logger tapes on two occasions. The first request was for the week of 23 to 29 September 2007. The licensee instead submitted logger tapes for 23 to 29 July 2006. At the hearing, the licensee explained that the responsible technician was out of the country and unavailable to deal with the request, and that the Commission's request was not discovered until two days before the tapes and information were due.
11. The Commission made a second request for program logs and logger tapes for the week of 7 to 13 October 2007. The Commission did not receive the program logs and logger tapes in response to this request. The licensee explained that it had little inclination to submit the requested material since the station had gone off the air later that same month.
12. The submission of logger tapes as required under the Regulations and Mandatory Order 1 is a basic and fundamental requirement of all radio stations regardless of the station's location or type. Submission of logger tapes enables the Commission to conduct an analysis of a station's programming so as to verify compliance with the Regulations and with individual conditions of licence. The maintenance of logger tapes also enables the Commission to investigate a station's programming in the case of complaints.
13. The Commission finds that the licensee was in non-compliance with Mandatory Order 1 and section 8(6) of the Regulations on two occasions in that it did not submit logger tapes as requested by the Commission for the weeks 23 to 29 September 2007 and 7 to 13 October 2007.

Compliance with Mandatory Order 2

14. Harmony had not filed annual returns under the terms required by the Regulations since 2004. In a letter dated 14 April 2008, the licensee stated that the annual returns could not be filed because the necessary records and staff were not available. However, on 26 May 2008, the licensee submitted annual returns for the years 2004-2007 inclusive. The Commission notes, however, that Mandatory Order 2 specifically requires that annual returns be submitted on or before 30 November of each year.
15. In addition, Harmony failed to provide music lists and a self-assessment report in response to a request made in conjunction with the Commission's request for logger tapes for the week of 7 to 13 October 2007.
16. In light of the above, the Commission finds that Harmony was in non-compliance with Mandatory Order 2 and section 9(2) of the Regulations with respect to the submission of annual returns. The licensee has since submitted the annual returns. However, Harmony did not comply with Mandatory Order 2 and section 9(3) of the Regulations with respect to the submission of self-assessment reports and music lists in connection with the Commission's request for the week of 7 to 13 October 2007.

Compliance with Mandatory Orders 3 through 6

17. The Commission considers that Harmony's failure to provide logger tapes as requested by the Commission and the consequent lack of concrete evidence that these tapes would provide makes it impossible to determine definitively whether or not the applicant has complied with Mandatory Orders 3 through 6.

The Campus Radio Policy

18. The Campus Radio Policy provides that a campus station must be associated with a post-secondary educational institution.
19. At the Public Hearing, the licensee indicated that the agreement it had with Robertson College was cancelled by the college following the September 2006 Winnipeg public hearing. Nonetheless, Harmony continued to operate the station after the cancellation of the agreement and after the company's dissolution, until CJWV-FM went off the air in October 2007.
20. Accordingly, the Commission finds that Harmony's operations were not consistent with a fundamental element of its licence, which requires that CJWV-FM operate as a campus/instructional station.

Regulatory action

21. Harmony has had a history of non-compliance since its last licence renewal in 2004. In Broadcasting Decision 2007-37, the Commission found the licensee in non-compliance with the Regulations with respect to the maintenance of logger tapes and the broadcast of

Canadian musical selections drawn from content category 2. As well, the Commission found that the licensee was in non-compliance with conditions of licence for CJWV-FM relating to the broadcast of news, category 3 music and formal educational programming. As a result of this non-compliance, the Commission imposed six mandatory orders.

22. As noted above, the Commission has found the licensee in non-compliance with Mandatory Order 1 and section 8(6) of the Regulations with respect to the submission of logger tapes on two occasions. As well, the licensee was in non-compliance with Mandatory Order 2 and section 9(2) of the Regulations in that it did not file annual returns by the required date. While the licensee has since submitted the requested annual returns, the licensee's failure to submit self assessment reports and music lists in response to a request by the Commission also represents non-compliance with Mandatory Order 2 and section 9(3) of the Regulations.
23. The licensee also admitted that it continued to operate after its agreement with Robertson College was cancelled. Accordingly, Harmony's operations were not consistent with a fundamental element of its licence, which requires that CJWV-FM operate as a campus/instructional station. The Campus Radio Policy defines such a station as one that is associated with a post-secondary educational institution. Such an association permits a station to fulfil the primary role of a campus/instructional station which, under the Campus Radio Policy is "to provide a training ground for students in broadcasting courses." In this regard, the Commission notes Mr. Capozzolo's admission at the hearing that no students were involved with the station in 2006-2007 before the station went off the air.
24. It is evident that Harmony has been consistently unable to comply with the Regulations and the mandatory orders. In response to questioning at the hearing, Mr. Capozzolo agreed that, despite many requests, Harmony had refused or had been incapable of demonstrating to the Commission that CJWV-FM had been in compliance. When asked why he did not contact the Commission to inform it of changes to Harmony's mailing address and to CJWV-FM's operations, Mr. Capozzolo stated "I had alligators at my throat. I thought that the alligators in Ottawa, with all due respect, were not as urgent."
25. The Commission is gravely concerned with the repeated and wilful non-compliance that Harmony has demonstrated. The *Broadcasting Act* declares that radio frequencies are public property. By its non-compliance, the Commission considers that Harmony has failed in carrying out its obligations to listeners in Winnipeg.
26. The Commission further notes that, according to plans set out at the public hearing, Mr. Capozzolo, who was the sole member of Harmony when the non-compliance occurred, would continue to play a prominent role in CJWV-FM as morning announcer. He also designed the course curriculum to be used under a new agreement with Robertson College.

27. While Harmony has presented a new agreement with Robertson College, the Commission is of the view that the result would be quite different from the model for campus/instructional stations envisaged in the Campus Radio Policy and, in turn, in Harmony's licence requiring it to operate as a campus/instructional station. Other such stations have arisen from long-standing broadcasting courses at post-secondary educational institutions which then incorporate the station into their training and course curriculum. The associated college provides financing for the station, a place for it to operate and logistical support.
28. In this case, the licensee indicated that the station would not be housed in a college or university and that the broadcasting course would not proceed if the licence for CJWV-FM were to be revoked or suspended. In reference to the course that he helped to develop, Mr. Capozzolo stated that it was "designed to appease or satiate the requirements of a campus radio licence." Mr. Capozzolo's statement, plus those made at the hearing regarding Harmony's plans for operating the station in the future as well as the business plan filed after the hearing, suggest efforts to adapt a station with a commercial orientation to the regulatory framework for a campus/instructional station. Accordingly, the Commission is concerned that Harmony still has not adequately addressed the Commission's concern expressed in Decision 2007-37 that the board of directors "made a decision to operate the station as a commercial operation"
29. The Commission is also not satisfied with Harmony's plans as they relate to the fulfilment of its condition of licence and mandatory order regarding the presentation of two hours per week of formal educational programming. Formal education programming consists of formal courses that provide academic instruction. In the Commission's view, the licensee's plan under which students would interview guests discussing various topics does not qualify as formal educational programming as set out in the Campus Radio Policy. The Commission is concerned that, at this point, Harmony still does not understand a fundamental element of its licence as a campus/instructional station under which formal educational programming is required.
30. The Commission discussed all possible regulatory measures that might be imposed with the applicant at the hearing. Given the long and wilful history of non-compliance by this licensee, its misunderstanding of the Campus Radio Policy and the nature of its licence and the fact that the station has been off the air for a considerable time, the Commission is of the view that revocation is the only appropriate measure in this case.
31. Accordingly the Commission **revokes** the broadcasting licence held by Harmony Broadcasting Corporation for CJWV-FM, Winnipeg. In light of the decision to revoke, there is no need to deal with issues related to a change in effective control of the undertaking.

Secretary General

Related documents

- *CJWV-FM Winnipeg – Issuance of mandatory orders*, Broadcasting Decision CRTC 2007-37, 29 January 2007
- *New licence form for campus radio stations*, Public Notice CRTC 2000-156, 16 November 2000
- *Campus Radio Policy*, Public Notice CRTC 2000-12, 28 January 2000
- *New campus instructional radio station*, Decision CRTC 96-776, 5 December 1996

This decision 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>.