



Broadcasting Decision CRTC 2011-539 and Broadcasting Orders CRTC 2011-540, 2011-541, 2011-542 and 2011-543

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Route reference: 2011-188

Ottawa, 31 August 2011

Rogers Broadcasting Limited

Chilliwack, Abbotsford and Vancouver, British Columbia

Application 2011-0371-2, received 18 February 2011

Public hearing in the National Capital Region

17 May 2011

CFUN-FM Chilliwack and its transmitters CFUN-FM-1 Abbotsford and CFUN-FM-2 Vancouver – Licence renewal and amendment and issuance of mandatory orders

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CFUN-FM Chilliwack and its transmitters CFUN-FM-1 Abbotsford and CFUN-FM-2 Vancouver from 1 September 2011 to 31 August 2012. This short-term renewal will allow for an earlier review of the licensee's compliance with the Radio Regulations, 1986 and its conditions of licence.*

The Commission also issues mandatory orders requiring the licensee to comply with its conditions of licence relating to local programming.

*The Commission **denies** the licensee's request to amend its condition of licence relating to local coverage.*

Introduction

1. The Commission received an application by Rogers Broadcasting Limited (Rogers) to renew the broadcasting licence for the English-language commercial radio programming undertaking CFUN-FM Chilliwack and its transmitters CFUN-FM-1 Abbotsford and CFUN-FM-2 Vancouver (formerly CKCL-FM, CKCL-FM-1 and CKCL-FM-2), which expires 31 August 2011.
2. The Commission received interventions in support of the application. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
3. In Broadcasting Decision 2007-148, the station was granted a four-year short-term renewal due to its lack of locally relevant programming for the Chilliwack and Fraser

Valley areas which it is licensed to serve. At that time, the Commission also reimposed requirements relating to local programming for the Chilliwack and Fraser Valley areas so as to ensure that the station did not broadcast exclusive Vancouver content. As part of its current application, the licensee requested to amend one of these conditions of licence, namely condition 3 relating to local coverage (see paragraph 4 below), by removing the words “each day.”¹

4. In Broadcasting Notice of Consultation 2011-188, the Commission stated that the licensee was in apparent non-compliance with the following conditions of licence set out in Broadcasting Decision 2007-148:
 1. The licensee shall broadcast at least once every half hour a station identification which includes specific reference to the frequency and location of the Chilliwack transmitter.
 2. The licensee shall refrain from identifying CKCL-FM and its transmitters on a basis that includes exclusive reference to Vancouver.
 3. The licensee shall include in the programming broadcast on CKCL-FM and its transmitters on a regular basis each day coverage of local news, sports and events of direct and particular relevance to the Fraser Valley, in particular Chilliwack.
 4. The licensee shall include in each traffic report and each weather report broadcast on CKCL-FM and its transmitters a specific reference to the areas CKCL-FM is licensed to serve.
5. The Commission also stated that the licensee may have failed to comply with section 15 of the *Radio Regulations, 1986* (the Regulations) relating to contributions to Canadian content development (CCD) for the 2008-2009 and 2009-2010 broadcast years.
6. The Commission stated that it intended to inquire into all of these matters at the hearing and that it expected the licensee to show cause why a mandatory order requiring it to comply with its conditions of licence and with section 15 of the Regulations should not be issued.

¹ In its application, the licensee also proposed to replace the condition of licence requiring it to broadcast once every half hour a station identification which includes specific reference to the frequency and location of the Chilliwack transmitter with one requiring it to broadcast a station identification at least twice hourly which includes specific reference to the Chilliwack, Abbotsford and Vancouver transmitters. However, at the hearing Rogers indicated that it no longer sought to amend this condition since it had determined after discussions with the Department of Industry (the Department) that it could meet both the current licence requirement and the Department's requirements regarding the broadcast of station identifications.

Non-compliances

Station identifications (conditions of licence 1 and 2)

7. Monitoring of CFUN-FM's programming by Commission staff revealed that the station identifications including specific reference to the location of the Chilliwack transmitter were not broadcast at least once every half hour for some segments during the period examined, namely from 18 to 24 April 2010. This monitoring also shows that the principal identification slogan for the station, used several times every hour, was referring to its Vancouver transmitter (e.g. "104.9 FUN-FM Vancouver's greatest hits" and "From the greatest city in the world this is CFUN-FM Vancouver's greatest hits 104.9 FUN-FM").
8. Rogers stated that station identifications scheduled during the period monitored were deleted by the computer system. As a remedy, Rogers indicated that it had rescheduled the station identifications so that they cannot be dropped by the computer system when programs do not run according to schedule. With respect to the principal identification slogan for the station, the licensee indicated that it believed that the identifications could target each specific community served, including Vancouver. Rogers added that it had since dropped the slogans referring to Vancouver and replaced them with slogans such as "FUN-FM's greatest hits" and "FUN-FM plays the greatest hits."
9. With respect to the requirement relating to the broadcast of station identifications at every half hour, the Commission considers that given the conditions of licence imposed Rogers should have monitored its programming more closely and ensured that this error would not occur. The Commission notes that its monitoring of the station took place three years after the imposition of the condition of licence at issue. Accordingly, the Commission finds that Rogers is in non-compliance with this condition of licence.
10. With respect to the principal identification slogan and the requirement relating to refraining from identifying the station and its transmitters on a basis that includes exclusive reference to Vancouver, the Commission notes that this condition of licence was imposed following many years of concern expressed by the Commission. The Commission considers that Rogers should have acknowledged the seriousness of the issue and been more vigilant in this regard. Accordingly, the Commission also finds Rogers in non-compliance with this requirement.

Local coverage (condition of licence 3)

11. Monitoring for the period examined revealed that one local item relating to Abbotsford was broadcast during each of the five weekly morning news bulletins. No such news was broadcast during the weekend. Further, on Monday, 19 April 2010, no coverage of any sports or other local events of direct and particular relevance to Chilliwack or the neighboring areas of the Fraser Valley, other than an entertainment event taking place in Langley, was broadcast.

12. Rogers indicated that it did not interpret the condition of licence as requiring CFUN-FM to offer local news, sports and events of direct and particular relevance to the Fraser Valley and Chilliwack each day and therefore did not broadcast all of these elements during the weekends. As a remedy, Rogers stated that it had instituted a community information and events segment for Chilliwack and the Fraser Valley as part of its regular programming seven days a week.
13. While the Commission sees value to the addition of a community information and events segment which focuses on Chilliwack and the Fraser Valley and encourages the licensee to maintain this practice, the Commission notes that the condition of licence at issue pertains to local news and sports in addition to local events of direct and particular relevance to Chilliwack and the Fraser Valley. The Commission does not see how the condition of licence is ambiguous. The term “each day” is written into the condition of licence. The condition of licence is not restricted to Monday to Friday, weekends or any other segment of the broadcast week. Accordingly, the Commission finds that Rogers is in non-compliance with this requirement. Moreover, the Commission considers that the measures taken by Rogers are insufficient and reiterates the importance of the licensee’s respecting its condition of licence in this regard.

Traffic and weather reports (condition of licence 4)

14. Commission monitoring revealed that the weather reports aired after 10 a.m. referred exclusively to Vancouver.
15. Rogers acknowledged that the Chilliwack weather was not being aired in a few instances. As a remedy, Rogers stated that it had reintroduced briefings on its conditions of licence in staff meetings to ensure that all on-air staff is made aware of the station’s specific licence requirements and obligations with respect to traffic and weather and that these requirements are not optional.
16. The Commission notes that the condition of licence at issue stipulated that each traffic and weather report should include a specific reference to the areas the station is licensed to serve. The Commission finds that Rogers did not meet this requirement. The Commission also considers that Rogers should have communicated the seriousness of its specific licence requirements and obligations to its station staff when they were imposed in 2007. Accordingly, the Commission finds that Rogers is in non-compliance with this requirement.

Contributions to Canadian content development

17. The Commission finds that the licensee failed to comply with section 15 of the Regulations relating to contributions to CCD for the 2008-2009 and 2009-2010 broadcast years. More specifically, it failed to distribute the correct amount (60% of the basic amount) to FACTOR. The total shortfall to FACTOR amounts to \$479.91.
18. Rogers indicated that it had erroneously believed it was operating under section 15(3) of the Regulations, which outlines transitional measures for radio stations that have

Canadian talent development (CTD) obligations imposed prior to 1 June 2007. Therefore, instead of contributing according to the new CCD regime, Rogers made its contributions in accordance with the transitional measures and ended up with a missing amount directed to FACTOR. Rogers has since paid the outstanding amount to FACTOR.

19. The Commission notes that the above-noted transitional measures did not apply to the licensee because of the absence of a condition of licence regarding CTD or CCD in Broadcasting Decision 2007-148. The Commission further notes that the shortfall amounts were minimal, that the overall amounts were paid in the required years despite the slight misallocation of funds and that the situation is unique since most licensees affected by the transition from the CTD to the CCD regime were subject to a condition of licence concerning CTD or CCD. The Commission nevertheless finds that Rogers was in non-compliance with its CCD requirements.

Request to change the requirement concerning local coverage

20. In its application, Rogers proposed to amend CFUN-FM's condition of licence 3 relating to local coverage by deleting the words "each day" so that it reads as follows:

The licensee shall include in the programming broadcast on CFUN-FM and its transmitters on a regular basis coverage of local news, sports and events of direct and particular relevance to the Fraser Valley, in particular Chilliwack.

21. Rogers submitted that the current wording of this condition of licence did not properly reflect the Commission's original intent, which, according to the licensee, was to ensure the local reflection of CFUN-FM's news and information programming and not the level or frequency of such programming. Rogers submitted that this proposed amendment would resolve any ambiguity with respect to the interpretation of this condition of licence, while still preserving the Commission's original intent with respect to CFUN-FM's local orientation.
22. Alternatively, at the hearing, Rogers proposed to amend this condition of licence as follows (change in bold):

The licensee shall include in the programming broadcast on CFUN-FM and its transmitters on a regular basis each day coverage of local news, sports **or** events of direct and particular relevance to the Fraser Valley, in particular Chilliwack.

23. In this respect, Rogers indicated that it provides a community information events segment on the weekends but that it is different from the regular local programming that it broadcasts from Monday to Friday, which includes formal newscasts. Therefore, to increase its programming flexibility, Rogers proposed the above-noted alternative amendment, which consists of choosing between local news, sports or events in its everyday programming.

24. With respect to the first proposed amendment, the Commission notes its previous comments above and remains of the view that this condition of licence is clear and reflects the concerns raised in Broadcasting Decision 2007-148. The Commission is of the view that removing the words “each day” would create ambiguity where none currently exists.
25. As regards the second proposed amendment, the Commission notes that Broadcasting Public Notice 2006-158 defines local programming as follows:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.

In their local programming, licensees must incorporate spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports coverage, and the promotion of local events and activities.

26. Consistent with that definition, the Commission concludes that CFUN-FM’s programming must include local news, sports and events of direct and particular relevance to the community served.
27. In light of all of the above, the Commission does not consider it appropriate to grant the requested amendments.

Conclusion

28. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to dealing with radio stations found in on-compliance. The Commission noted in particular that each instance of non-compliance will be evaluated in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The Commission also noted that it will consider the circumstances leading to the non-compliance, the licensee’s arguments and the measures taken to rectify the situation.
29. The Commission indicated that the possible sanctions include the following: short-term licence renewal, imposition of conditions of licence, mandatory orders or non-renewal or suspension of the licence.
30. The Commission notes that the reasons provided by Rogers to explain its non-compliance with its conditions of licence consist of a mix of computer issues, human error and apparent misunderstanding of its conditions of licence. The Commission considers that the conditions of licence imposed as part of the station’s last renewal in 2007 and the intention behind them were very clear. By not respecting the above-noted conditions of licence during the current licence term, the Commission is of the view that Rogers has again failed to demonstrate that CFUN-

FM's programming is mainly directed to Chilliwack and the Fraser valley, not Vancouver.

31. The Commission also notes that following its last licence renewal Rogers did not take immediate action to implement measures to respect the conditions of licence but rather only reacted following monitoring and questioning by Commission staff some three years after the imposition of the conditions of licence. Further, Rogers only added greater clarity to its measures at the hearing. Under the circumstances, the Commission is not satisfied that Rogers takes its regulatory obligations or the Commission's past determinations seriously in this regard. The Commission is also not convinced that non-compliance with the conditions of licence related to local programming will not likely recur.
32. In light of all of the above, the Commission considers that a short-term, one-year renewal for CFUN-FM would be appropriate. Accordingly, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CFUN-FM Chilliwack and its transmitters CFUN-FM-1 Abbotsford and CFUN-FM-2 Vancouver from 1 September 2011 to 31 August 2012. This short-term renewal will allow for an earlier review of the licensee's compliance with the Regulations and its conditions of licence. The licence will be subject to the **conditions of licence** set out in Appendix 5 to this decision.
33. Additionally, for the reasons outlined above, the Commission is also issuing with this decision mandatory orders requiring the licensee to comply with its conditions of licence relating to local programming. These mandatory orders are set out in Appendices 1 through 4 to this decision. These orders will be filed immediately with the Federal Court and become orders of the Federal Court. Failure to comply with Federal Court orders may result in recourse to the compliance procedures of that court.
34. In light of its issuance of mandatory orders and the short-term renewal for the station, which will be followed by a further review of the licensee's compliance with its conditions of licence, the Commission considers that the condition of licence requiring the licensee to submit bi-monthly reports demonstrating compliance with its conditions of licence relating to local programming is unnecessary. Accordingly, it has not retained this condition.
35. The Commission puts the licensee on notice that any future non-compliance may result in additional measures, including short-term renewal, suspension, non-renewal or revocation of licence pursuant to sections 9 and 24 of the *Broadcasting Act*.

Employment equity

36. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *CKCL-FM Chilliwack and its transmitters CKCL-FM-1 Abbotsford and CKCL-FM-2 Vancouver – Licence renewal*, Broadcasting Decision CRTC 2007-148, 22 May 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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

Appendix 1 to Broadcasting Decision CRTC 2011-539

Broadcasting Mandatory Order CRTC 2011-540

Rogers Broadcasting Limited, licensee of CFUN-FM Chilliwack and its transmitters CFUN-FM-1 Abbotsford and CFUN-FM-2 Vancouver, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CFUN-FM Chilliwack and its transmitters CFUN-FM-1 Abbotsford and CFUN-FM-2 Vancouver – Licence renewal and amendment and issuance of mandatory orders*, Broadcasting Decision CRTC 2011-539, 31 August 2011, with the condition of its licence set out below:

The licensee shall broadcast at least once every half hour a station identification which includes specific reference to the frequency and location of the Chilliwack transmitter.

Appendix 2 to Broadcasting Decision CRTC 2011-539

Broadcasting Mandatory Order CRTC 2011-541

Rogers Broadcasting Limited, licensee of CFUN-FM Chilliwack and its transmitters CFUN-FM-1 Abbotsford and CFUN-FM-2 Vancouver, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CFUN-FM Chilliwack and its transmitters CFUN-FM-1 Abbotsford and CFUN-FM-2 Vancouver – Licence renewal and amendment and issuance of mandatory orders*, Broadcasting Decision CRTC 2011-539, 31 August 2011, with the condition of its licence set out below:

The licensee shall refrain from identifying CFUN-FM and its transmitters on a basis that includes exclusive reference to Vancouver.

Appendix 3 to Broadcasting Decision CRTC 2011-539

Broadcasting Mandatory Order CRTC 2011-542

Rogers Broadcasting Limited, licensee of CFUN-FM Chilliwack and its transmitters CFUN-FM-1 Abbotsford and CFUN-FM-2 Vancouver, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CFUN-FM Chilliwack and its transmitters CFUN-FM-1 Abbotsford and CFUN-FM-2 Vancouver – Licence renewal and amendment and issuance of mandatory orders*, Broadcasting Decision CRT 2011-539, 31 August 2011, with the condition of its licence set out below:

The licensee shall include in the programming broadcast on CFUN-FM and its transmitters on a regular basis each day coverage of local news, sports and events of direct and particular relevance to the Fraser Valley, in particular Chilliwack.

Appendix 4 to Broadcasting Decision CRTC 2011-539

Broadcasting Mandatory Order CRTC 2011-543

Rogers Broadcasting Limited, licensee of CFUN-FM Chilliwack and its transmitters CFUN-FM-1 Abbotsford and CFUN-FM-2 Vancouver, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CFUN-FM Chilliwack and its transmitters CFUN-FM-1 Abbotsford and CFUN-FM-2 Vancouver – Licence renewal and amendment and issuance of mandatory orders*, Broadcasting Decision CRTC 2011-539, 31 August 2011, with the condition of its licence set out below:

The licensee shall include in each traffic report and each weather report broadcast on CFUN-FM and its transmitters a specific reference to the areas CFUN-FM is licensed to serve, including Chilliwack and the Fraser Valley.

Appendix 5 to Broadcasting Decision CRTC 2011-539

Conditions of licence

1. The licence will be subject 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.
2. The licensee shall broadcast at least once every half hour a station identification which includes specific reference to the frequency and location of the Chilliwack transmitter.
3. The licensee shall refrain from identifying CFUN-FM and its transmitters on a basis that includes exclusive reference to Vancouver.
4. The licensee shall include in the programming broadcast on CFUN-FM and its transmitters on a regular basis each day coverage of local news, sports and events of direct and particular relevance to the Fraser Valley, in particular Chilliwack.
5. The licensee shall include in each traffic report and each weather report broadcast on CFUN-FM and its transmitters a specific reference to the areas CFUN-FM is licensed to serve, including Chilliwack and the Fraser Valley.
6. For the purposes of condition of licence number 8 set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, the definition of local programming shall be as set out above in conditions of licence 2 through 5, which add requirements for CFUN-FM as regards local programming, as well as that set out in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006, as follows:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.

In their local programming, licensees must incorporate spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports coverage, and the promotion of local events and activities.