



Broadcasting Decision CRTC 2011-552 and Broadcasting Orders CRTC 2011-553 and 2011-554

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Route reference: 2011-188

Ottawa, 31 August 2011

1158556 Ontario Ltd.

Timmins, North Bay, Iroquois Falls, Kirkland Lake, New Liskeard,
Sault Ste Marie, Elliot Lake, Chapleau, Wawa and Kapuskasing, Ontario; and
Red Deer, Alberta

Application 2011-0296-2, received 2 February 2011

Public hearing in the National Capital Region

17 May 2011

CHIM-FM Timmins and its transmitters CHIM-FM-1 North Bay, CHIM-FM-2 Iroquois Falls, CHIM-FM-3 Kirkland Lake, CHIM-FM-4 New Liskeard, CHIM-FM-5 Red Deer, CHIM-FM-6 Sault Ste. Marie, CHIM-FM-7 Elliot Lake, CHIM-FM-8 Chapleau, CHIM-FM-9 Wawa and CHIM-FM-10 Kapuskasing – Licence renewal and Issuance of mandatory orders

*The Commission **renews** the broadcasting licence for the English-language commercial specialty radio station CHIM-FM Timmins and its transmitters at the above-mentioned locations, from 1 September 2011 to 31 August 2012. This short-term licence renewal will allow for an earlier review of the licensee's compliance with the Radio Regulations, 1986 (the Regulations) and its conditions of licence.*

The Commission also issues mandatory orders pursuant to section 12(2) of the Broadcasting Act requiring the licensee to comply at all times with the requirements set out in section 9(2) of the Regulations, which relates to the filing of annual returns, and with sections 15(2) and 15(4) of the Regulations, which relate to contributions to Canadian content development initiatives. These mandatory orders are set out in Appendices 1 and 2 to this decision.

Introduction

1. The Commission received an application by 1158556 Ontario Ltd. (1158556 Ontario) to renew the broadcasting licence for the English-language commercial specialty radio programming undertaking CHIM-FM Timmins and its transmitters CHIM-FM-1 North Bay, CHIM-FM-2 Iroquois Falls, CHIM-FM-3 Kirkland Lake, CHIM-FM-4 New Liskeard, CHIM-FM-5 Red Deer, CHIM-FM-6 Sault Ste. Marie, CHIM-FM-7 Elliot Lake, CHIM-FM-8 Chapleau, CHIM-FM-9 Wawa and CHIM-FM-10

Kapuskasing, expiring 31 August 2011. The Commission did not receive any interventions in connection with this application.

2. In Broadcasting Notice of Consultation 2011-188, the Commission stated that the licensee was in apparent non-compliance with sections 9(2) and 15 of the *Radio Regulations, 1986* (the Regulations), relating, respectively, to the filing of annual returns, for the 2009-2010 broadcast year, and to contributions to Canadian content development (CCD) initiatives, for the 2007-2008, 2008-2009 and 2009-2010 broadcast years. Further, the Commission noted that, in Broadcasting Decision 2007-433, it renewed the broadcasting licence for CHIM-FM for a four-year short-term period. This short-term licence period was a result of the licensee's failure to comply with section 9(2) of the Regulations, relating to the submission of annual reports, for the 2000-2001 through 2003-2004 broadcast years, and to its failure to comply with the requirements regarding its contributions to Canadian talent development (CTD) for the broadcast years 2000-2001 through 2005-2006.
3. In Broadcasting Notice of Consultation 2011-188, the Commission indicated that it expected the licensee to show cause at the hearing why a mandatory order should not be issued requiring the licensee to comply with sections 9(2), 15(2) and 15(4) of the Regulations.

Commission's analysis and determinations

4. After examining the application in light of applicable regulations and policies, the Commission considers that the issues to be addressed in its determinations relate to the following:
 - the submission of annual returns; and
 - contributions to CCD.

Submission of annual returns

5. Section 9(2) of the Regulations requires licensees to file their annual returns on or before 30 November of a given year for the broadcast year ending the previous 31 August. The Commission notes that the licensee filed its annual return for the 2009-2010 broadcast year on 27 April 2011.
6. In a letter dated 1 March 2011 and at the hearing, the licensee indicated that the late submission of the 2009-2010 annual return was due in part to the loss of a number of members of the Board of Directors and volunteers. It added that the station's corporate year end does not coincide with the end of the broadcast year, which also contributed to the delay.
7. The licensee further indicated that a bookkeeper has been hired to keep the station's affairs in order and that the station's year end will be changed to match the end of the broadcast year.

8. The Regulations clearly set out the information required as well as the deadline for the filing of annual returns. The Commission notes that the licensee's failure to provide this information as required by the Regulations is an ongoing concern that has spanned two licence terms, and is not convinced that the licensee has mastered this basic requirement. Further, it considers that the remedial measures taken during the current licence term are insufficient to ensure ongoing compliance in this regard. Given the foregoing, the Commission finds that the licensee was in non-compliance with section 9(2) of the Regulations for the 2009-2010 broadcast year.

Contributions to Canadian content development

9. Section 15 of the Regulations requires licensees of commercial radio programming undertakings to make basic annual CCD contributions based on the undertakings' revenues for the previous broadcast year. Licensees are required to contribute 60% of this basic amount to FACTOR or MUSICACTION, with the remainder going to eligible initiatives. As noted above, in Broadcasting Notice of Consultation 2011-188, the Commission stated that the licensee may have failed to comply with its CCD regulatory requirements for the 2007-2008, 2008-2009 and 2009-2010 broadcast years.
10. Prior to the hearing, the licensee filed additional documents relating to its CCD contributions that demonstrated that it had, in fact, met its obligations for the 2007-2008 and 2009-2010 broadcast years.
11. At the hearing, the licensee stated that it had understood that it had made the appropriate CCD contributions for the 2008-2009 broadcast year. It indicated that a payment was made to Christopher Ste. Croix, a Canadian artist and operator of Home Grown Studio's Ink, in addition to a contribution to FACTOR. At the hearing, the licensee was asked to provide proof of payment and eligibility of the particular artist mentioned above for CCD contributions. Additionally, the licensee was requested to provide the Commission with a description of the initiative and how the funds were expended.
12. The Commission received cancelled cheques and a brief letter from Christopher Ste. Croix indicating that the funds were received. Despite a very specific request from the Commission, the licensee did not provide any documentation indicating the eligibility of the initiative or how the contributions were expended, such as a clear descriptions of the initiative, of how the funding was used by the recipient, and of how the initiative meets the CCD eligibility criteria set out in the Broadcasting Public Notice 2006-158.
13. The Commission notes that this is the second consecutive licence term for which the licensee is in non-compliance with its CTD/CCD requirements. Further, the licensee did not provide any compelling documentation to justify the eligibility of its 2008-2009 CCD contribution to Christopher Ste. Croix, despite the numerous opportunities since 2009 it had to provide this information as part of its annual returns. The Commission therefore finds that the licensee still has a shortfall of \$300 for the 2008-

2009 broadcast year, and that it was therefore in non-compliance with section 15 of the Regulations for that broadcast year.

14. Accordingly, the Commission directs the licensee to expend the CCD shortfall amount of \$300 for the 2008-2009 broadcast year. The Commission also directs the licensee to file appropriate proof of payments by no later than 30 September 2011 attesting to the expense of this shortfall. A **condition of licence** to that effect is set out in Appendix 3 to this decision.

Conclusion

15. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to dealing with radio stations found in non-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 in question, the licensee's arguments, and the measures taken to rectify the situation.
16. The Commission also indicated that the possible sanctions include the following: short-term licence renewal, imposition of conditions of licence, mandatory orders, or the non-renewal or suspension of the licence.
17. The Commission notes that the licensee has demonstrated repeated non-compliance with its obligations set out under section 9(2) of the Regulations, as well as in regard to its obligations relating to the support of Canadian talent and content through its CTD and CCD contributions.
18. In accordance with its revised practice regarding radio non-compliance, the Commission considers that a short-term renewal period of one year for CHIM-FM would be appropriate. Accordingly, the Commission **renews** the broadcasting licence for the English-language commercial specialty radio programming undertaking CHIM-FM Timmins and its transmitters CHIM-FM-1 North Bay, CHIM-FM-2 Iroquois Falls, CHIM-FM-3 Kirkland Lake, CHIM-FM-4 New Liskeard, CHIM-FM-5 Red Deer, CHIM-FM-6 Sault Ste. Marie, CHIM-FM-7 Elliot Lake, CHIM-FM-8 Chapleau, CHIM-FM-9 Wawa and CHIM-FM-10 Kapuskasing, 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 at an earlier date. It will also permit the Commission to review with the licensee its success in implementing the measures that it has proposed to ensure that complete annual returns are filed with the Commission before the 30 November deadline and that they include all required documents. The licence will be subject to the **conditions of licence** set out in Appendix 3 to this decision.
19. The Commission also imposes mandatory orders, set out in Appendices 1 and 2 to this decision, requiring 1158556 Ontario Ltd. to comply at all times with sections 9(2) 15(2) and 15(4) of the Regulations. These mandatory orders will be filed immediately

with the Federal Court and become an order of the Federal Court. Failure to comply with Federal Court orders may result in resort to the compliance procedures of that Court.

20. The Commission reiterates the importance it places on a licensee's observance of its regulatory obligations and its conditions of licence, and views any non-compliance as a very serious matter. The Commission notes that it may consider recourse to additional measures, including suspension, non-renewal or revocation of the licence pursuant to sections 9 and 24 of the *Broadcasting Act*, should CHIM-FM once again breach the Regulations or any of its conditions of licence.

Secretary General

Related documents

- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2011-188, 16 March 2011
- *CHIM-FM Timmins – Licence renewal*, Broadcasting Decision CRTC 2007-433, 24 December 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 2011-552

Broadcasting Mandatory Order CRTC 2011-553

1158556 Ontario Ltd., for its station CHIM-FM Timmins, is hereby ordered, pursuant to section 12(2) of the *Broadcasting Act*, to comply at all times, within the term of the licence granted in *CHIM-FM Timmins and its transmitters CHIM-FM-1 North Bay, CHIM-FM-2 Iroquois Falls, CHIM-FM-3 Kirkland Lake, CHIM-FM-4 New Liskeard, CHIM-FM-5 Red Deer, CHIM-FM-6 Sault Ste. Marie, CHIM-FM-7 Elliot Lake, CHIM-FM-8 Chapleau, CHIM-FM-9 Wawa and CHIM-FM-10 Kapuskasing – Licence renewal and Issuance of mandatory orders*, Broadcasting Decision CRTC 2011-552, 31 August 2011, with the requirement set out in section 9(2) of the *Radio Regulations, 1986*, which reads as follows:

9 (2) On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous August 31.

Appendix 2 to Broadcasting Decision CRTC 2011-552

Broadcasting Mandatory Order CRTC 2011-554

1158556 Ontario Ltd., for its station CHIM-FM Timmins, is hereby ordered, pursuant to section 12(2) of the *Broadcasting Act*, to comply at all times, within the term of the licence granted in *CHIM-FM Timmins and its transmitters CHIM-FM-1 North Bay, CHIM-FM-2 Iroquois Falls, CHIM-FM-3 Kirkland Lake, CHIM-FM-4 New Liskeard, CHIM-FM-5 Red Deer, CHIM-FM-6 Sault Ste. Marie, CHIM-FM-7 Elliot Lake, CHIM-FM-8 Chapleau, CHIM-FM-9 Wawa and CHIM-FM-10 Kapuskasing – Licence renewal and Issuance of mandatory orders*, Broadcasting Decision CRTC 2011-552, 31 August 2011, with the requirements set out in sections 15(2) and 15(4) of the *Radio Regulations, 1986*, which read as follows:

15 (2) Except as otherwise provided under a condition of its licence that refers expressly to this subsection and subject to subsection (3), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station or ethnic station shall contribute the following amount annually to eligible initiatives:

- (a) if the licensee's total revenues are less than \$625,000, \$500;
- (b) if the licensee's total revenues are at least \$625,000 but not more than \$1,250,000, \$1,000; and
- (c) if the licensee's total revenues are more than \$1,250,000, \$1,000 plus one half of one percent of those revenues that are in excess of \$1,250,000.

15 (4) Except as otherwise provided under a condition of its licence, the licensee shall make at least 60% of the contribution referred to in subsection (2) to FACTOR or MUSICACTION. However, if the licensee's station is an ethnic station or spoken word station, the licensee may instead make that percentage of the contribution to any eligible initiative that supports the creation of ethnic programs or programming from content category 1, as the case may be.

Appendix 3 to Broadcasting Decision CRTC 2011-552

Term, conditions of licence and encouragement

Term

The licence will expire 31 August 2012.

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, in any broadcast week, devote 15% or more of its musical selections from content category 3 (Special Interest Music) to Canadian selections broadcast in their entirety.

For the purpose of this condition, the terms “broadcast week,” “content category” and “musical selection” shall have the meaning set out in section 2 of the *Radio Regulations, 1986*.

3. The licensee shall file appropriate proof of payment and proof of eligibility to the Commission by no later than 30 September 2011 attesting to the expense of \$300 to an eligible initiative relating to the shortfall highlighted in the decision above. Proof of eligibility must include a description of the initiative, how it meets the Canadian content development eligibility criteria set out in the *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006, as well as details concerning how the funds were used by the recipient.

Encouragement

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.