



## Broadcasting Decision CRTC 2011-725

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Route reference: 2011-188

Additional reference: 2011-188-4

Ottawa, 24 November 2011

**Astral Media Radio Inc.**  
Gatineau, Quebec

*Application 2011-0305-1, received 1 February 2011  
Public hearing in the National Capital Region  
17 May 2011*

### **CKTF-FM Gatineau – Licence renewal**

*The Commission **renews** the broadcasting licence for the French-language commercial radio station CKTF-FM Gatineau for a short-term period, from 1 April 2012 to 31 August 2015. In addition, the Commission finds that Astral Media Radio Inc. used montages inappropriately and thus circumvented the Radio Regulations, 1986 with respect to the broadcast of French-language vocal music. Accordingly, the Commission imposes a **condition of licence** to limit the licensee's use of montages.*

#### **Introduction**

1. The Commission received an application by Astral Media Radio Inc. (Astral) to renew the broadcasting licence for the French-language commercial radio programming undertaking CKTF-FM Gatineau, which expires 31 March 2012.<sup>1</sup>
2. On 17 December 2010, the Commission received a complaint by the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) alleging that certain French-language radio stations, including CKTF-FM, were in non-compliance with the requirements of the *Radio Regulations, 1986* (the Regulations) relating to French-language vocal music (FVM). According to ADISQ, this non-compliance is due to an abusive use of montages in the music programming of the stations in question. In its complaint, ADISQ submitted that those stations [translation] “wrongly qualify a simple succession of English-language selections broadcast almost in their entirety as a montage in order to consider this montage as a single English-language selection for the purpose of calculating the levels of FVM.”

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<sup>1</sup> The broadcasting licence for this undertaking was administratively renewed from 1 September 2011 to 31 March 2012 in Broadcasting Decision 2011-477.

3. On 6 and 7 January 2011, the Society of Composers, Authors and Music Publishers of Canada (SOCAN) and the Association des professionnels de l'édition musicale (APEM) submitted letters of support relating to ADISQ's complaint.
4. On 16 March 2011, the Commission issued Broadcasting Notice of Consultation 2011-188. In that notice, the Commission noted that, because of the inappropriate use of montages, the licensee may have failed to comply with sections 2.2(5) and 2.2(10) of the Regulations relating to the broadcast of FVM, during the broadcast week of 23 to 29 May 2010 and between 6:00 a.m. and 6:00 p.m. Monday to Friday of that same week, as well as with section 15 of the Regulations relating to contributions to Canadian content development (CCD), for the 2009-2010 broadcast year. In the same notice, the Commission also noted its intention to discuss with the licensee the possibility of imposing additional measures relating to the broadcast of montages (e.g. the imposition of conditions of licence limiting the duration and frequency of montages).
5. In addition, the Commission directed the licensee to attend a public hearing to show cause why a mandatory order requiring it to comply with the above-mentioned sections of the Regulations should not be issued.
6. The Commission received an intervention in support of the application, interventions in opposition, and comments. The public record for this proceeding can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), under "Public Proceedings."

### **Interventions and reply**

7. The ministère de la Culture, des Communications et de la Condition féminine du Québec (the Ministère) and ADISQ both submitted comments in this proceeding. In its comment, the Ministère reiterated the position it took during the proceeding for Broadcasting Public Notice 2006-158 (the 2006 Commercial Radio Policy), which was that the level of FVM provides an important opportunity to broadcast French-language songs. It asked that the Commission be vigilant in enforcing strict adherence to its own regulatory provisions.
8. ADISQ indicated that the Commission's current intervention is fully justified, as broadcasters were warned of this possibility in 2006. ADISQ stated that licensees may not limit themselves to a single part of the entire regulations to be considered compliant. In addition, in regard to non-compliance with CCD requirements, ADISQ expressed support for the Commission's position, which is that good behaviour by a group of stations does not redeem non-compliance by one of its stations.
9. SOCAN, APEM and the Société professionnelle des auteurs et des compositeurs du Québec supported ADISQ's position and the solutions it proposed.
10. In its reply, Astral submitted that ADISQ's arguments do not prove that its montages are non-compliant. According to Astral, its montages are compliant with the Commission's definition. Astral expressed concern that ADISQ called for the disqualification of all its montages without explanation or justification. Astral claimed

that the Commission is trying to impose additional measures by changing the definition of a montage as set out in the current regulations so that the definition may be interpreted differently. Finally, in regard to its non-compliance relating to CCD contributions, Astral stated that it is prepared to make its outstanding contributions to an eligible party should the Commission refuse to consider the École nationale de l'humour (ÉNH) as an eligible party.

11. After examining the public record for this application in light of applicable policies and regulations, the Commission considers that the issues it must address are the following: the broadcast of montages and of FVM, and the licensee's apparent non-compliance relating to its CCD contributions.

## **Regulatory framework**

### **Montages**

12. The Regulations define a montage as “a compilation of one minute or more in duration containing excerpts from several musical selections but does not include a medley.” The Regulations also define a montage as a musical selection, which is defined as follows: “any live or recorded music of one minute or more in duration that is broadcast uninterrupted, and includes a medley and a montage.”
13. In paragraph 42 of Public Notice 1998-132, the Commission provides the following details regarding montages:
  42. ... in order to be classified as a montage, the programming should consist of excerpts that are tightly woven and tied together by unifying elements such as a common rhythm or theme. Several unrelated musical excerpts played back to back, will therefore not be considered to be a montage, even if they are by the same artist. In cases where it is not clear whether the programming is a montage or a series of shortened selections, the Commission will consider the programming as a series of shortened selections.
14. In the 2006 Commercial Radio Policy, the Commission again addressed the issue of montages. Paragraphs 95 and 96 indicated the following:
  95. Regarding the issue of montages, the Commission emphasizes the importance of playing musical selections in their entirety. However, the Commission has recognized that there can be positive aspects to programming montages. Properly used, montages allow audiences to discover new Canadian artists or selections that would not otherwise be broadcast. The Commission is, however, of the view that montages should not be used to circumvent the regulatory requirements related to [FVM].
  96. Accordingly, the Commission will closely monitor the use of montages and will deal with any problems on a case-by-case basis, imposing necessary measures when appropriate.

### **French-language vocal music**

15. The Commission's objectives regarding the broadcast of FVM were set out in paragraph 151 of Public Notice 1998-41:

151. The Commission's requirements are based on two related goals. It wishes to support a francophone recording industry in Canada and to allow francophones to have access to music reflecting their culture. The Commission has always considered it to be the responsibility of French-language broadcasters to continue their efforts to contribute to the development of French-language expression.

16. In paragraph 38 of the 2006 Commercial Radio Policy, the Commission clarified its requirements for airing FVM as follows:

38. To ensure that French-language radio stations holding commercial licences serve the needs and interests of their audiences, section 2.2 of the Radio Regulations requires that at least 65% of the category 2 vocal musical selections aired by French-language stations during each broadcast week be in the French language. To ensure that French-language vocal selections are not consigned to periods with relatively small audiences, the Radio Regulations also require that at least 55% of the category 2 vocal musical selections aired by French-language stations each week between 6 a.m. and 6 p.m., Monday through Friday during any broadcast week be French-language selections.

### **Commission's analysis and decisions with respect to montages and French-language vocal music**

17. The Commission reiterates its view that French-language broadcasters must continue striving to contribute to the development of French-language expression. As mentioned above, the Commission indicated in the 2006 Commercial Radio Policy that montages should not be used to circumvent the regulatory requirements relating to FVM, and that it will closely monitor the use of montages and will deal with any problems on a case-by-case basis, imposing necessary measures when appropriate.
18. The Commission considers that the time allocated to the broadcast of non-Canadian English-language music through montages is cause for concern. Its analysis of CKTF-FM's logger tapes and music list for the week of 23 to 29 May 2010 revealed that the 75 montages broadcast by the licensee represented 14.5% of the 126 hours of programming broadcast that broadcast week. Further, the montages were all counted as English-language selections.
19. At the hearing, the Commission asked Astral and other licensees to submit in writing their respective positions on the possibility of implementing transitional measures applicable to their respective stations that would ensure that the use of montages remains consistent with the objective of the regulations and the intent of the Commission's policy on montages.

20. In response to the Commission's request, Astral and the other licensees consulted with each other and established a collective commitment to devote no more than 14% of each broadcast week to montages from 1 September 2011 to the earliest of the following two dates: a) 31 August 2013 or b) the Commission's comprehensive review of the various elements of the FVM policy.
21. In the present case, the Commission notes that the montages broadcast by the licensee are mostly made up of excerpts of non-Canadian English-language music, that they account for a significant part of the station's programming, and that they are not generally made up of selections by new artists that would not otherwise be broadcast. The Commission also notes that, in several instances, the montages are not made up of musical excerpts that are tightly woven and tied together by unifying elements but instead are played almost in their entirety, and that the duration of each montage is relatively long.
22. In addition, the Commission notes Astral's comments to the effect that it believes that the Commission is trying to impose additional measures by changing the definition of a montage as set out in the current regulations so that the definition may be interpreted differently.
23. The Commission considers that Astral's interpretation of the rules regarding montages would permit it to broadcast montages that:
- include long excerpts from several non-Canadian English-language selections that would count as a single English-language selection;
  - account for a significant part of the station's programming;
  - generally would not be made up of selections by new artists that would not otherwise be broadcast;
  - in many cases, are not made up of musical excerpts that are tightly woven and tied together by unifying elements;
  - would be composed of musical excerpts that would instead be played almost in their entirety; and
  - are of relatively long duration.

The Commission considers that such an interpretation is not in line with the objectives of the regulations relating to FVM or the intent of the policy on montages.

24. The Commission considers that Astral's practices enable it to maintain the required regulatory percentage of FVM while broadcasting significantly fewer French-language selections. Accordingly, the Commission finds that these practices constitute an inappropriate use of montages and thus allow for the circumvention of the regulatory requirements relating to FVM.

25. The Commission notes the joint proposal made by the licensees called to the hearing to limit the overall duration of montages to no more than 14% of all programming broadcast each broadcast week. However, the Commission is of the view that the level proposed by the licensees is too high and that it would not ensure compliance with the regulatory requirements relating to FVM and Canadian content. Given its concerns regarding the percentage of English-language musical selections broadcast by Astral, the Commission considers that there is reason to limit the overall duration of montages further. In light of the foregoing and as an incentive for the licensee to broadcast more FVM and thus respect the regulatory requirements, the Commission considers it appropriate to limit the maximum duration of montages broadcast each broadcast week to 10% of all programming, i.e., to 12 hours and 36 minutes. Accordingly, the Commission imposes the following **condition of licence** with respect to the use of montages:

The licensee shall devote no more than 10% of all of programming broadcast each broadcast week to montages. For the purposes of this condition of licence, the term “broadcast week” shall have the meaning set out in the *Radio Regulations, 1986*.

26. In addition, during the hearing, some licensees stated that the Commission’s definitions and expectations regarding montages leave room for interpretation and that they should be clarified. Although the Commission does not share this view, it has nonetheless published today Broadcasting Information Bulletin 2011-728, in which it reiterates its objectives and expectations regarding the broadcast of montages by radio licensees, refers to the relevant sections of the regulatory framework and confirms the interpretation that should be given to certain terms.

### **Commission’s analysis and decision with respect to contributions to Canadian content development**

27. The licensee made CCD contributions to the ÉNH for the 2009-2010 broadcast year. In paragraph 108 of the 2006 Commercial Radio Policy, the Commission specified which parties and initiatives are eligible for CCD funding other than FACTOR and MUSICACTION. The Commission notes that the ÉNH is not an eligible party under the 2006 Commercial Radio Policy, and that it is not an initiative that is directly targeted to audio content.

28. The Commission recognizes the ENH’s role in training new humourists in Quebec and encourages the licensee to develop an activity associated with the ÉNH that corresponds to the Commission’s policy on CCD. However, the licensee cannot include its contributions to the ÉNH for the 2009-2010 broadcast year in its CCD contributions. As such, CKTF-FM has a \$197.29 shortfall in its CCD contributions for the broadcast year in question.

29. Accordingly, the Commission requires the licensee to direct at least \$197.29 to a party or initiative that is eligible for CCD funding, within 60 days of this decision, and to provide the Commission with proof of payment.

30. Furthermore, the Commission notes that the contributions made to the ÉNH by the 23 other stations owned by the licensee are also not eligible, and as such, this issue may be raised again during the licence renewal process for those stations. If the total shortfall in CCD contributions for the licensee's 23 other stations is paid to a party or initiative that is eligible for CCD funding before these stations renew their licences, the Commission requests that Astral notify it and provide proof of payment.

## Conclusion

31. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach for dealing with 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, the arguments provided by the licensee, as well as the measures taken to rectify the situation.

32. The Commission also specified that possible sanctions would include short-term licence renewal, imposition of conditions of licence, mandatory orders, and non-renewal or suspension of licence.

33. In light of the licensee's non-compliance with respect to CCD contributions and the practices used by the licensee to circumvent regulatory requirements relating to FVM, and in accordance with its revised approach to non-compliance by radio stations, the Commission deems it appropriate to renew the licence for CKTF-FM for a short-term period. Furthermore, it considers that there is no need to issue a mandatory order directing the licensee to adhere to sections 2.2(5), 2.2(10) and 15 of the Regulations. Accordingly, the Commission **renews** the broadcasting licence for the French-language commercial radio programming undertaking CKTF-FM Gatineau from 1 April 2012 to 31 August 2015 under the terms and **conditions of licence** set out in the appendix to this decision.

34. In addition, the licensee is required to direct at least \$197.29 to a party or initiative that is eligible for CCD funding, within 60 days of this decision, and to provide the Commission with proof of payment.

## Employment equity

35. 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

- *Requirements for the broadcast of radio montages*, Broadcasting Information Bulletin CRTC 2011-728, 24 November 2011

- *Administrative renewals*, Broadcasting Decision CRTC 2011-477, 9 August 2011
- *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
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Regulations Amending the Radio Regulations, 1986 – Commercial Radio Programming*, Public Notice CRTC 1998-132, 17 December 1998
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998

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



# Appendix to Broadcasting Decision CRTC 2011-725

## Term and conditions of licence

### Term

The licence will be in effect from 1 April 2012 to 31 August 2015.

### 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 devote no more than 10% of all of programming broadcast during the broadcast week to montages. For the purposes of this condition of licence, the term “broadcast week” shall have the meaning set out in the *Radio Regulations, 1986*.