



Broadcasting Decision CRTC 2011-727

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Route reference: 2011-188

Ottawa, 24 November 2011

RNC MEDIA Inc.
Gatineau, Quebec

Application 2011-0127-9, received 27 January 2011
Public hearing in the National Capital Region
17 May 2011

CFTX-FM Gatineau – Licence renewal

*The Commission **renews** the broadcasting licence for the French-language commercial radio station CFTX-FM Gatineau for a short-term period, from 1 April 2012 to 31 August 2016.*

Introduction

1. The Commission received an application by RNC MEDIA Inc. (RNC) to renew the broadcasting licence for the French-language commercial radio programming undertaking CFTX-FM Gatineau, which expires on 31 March 2012.¹
2. The licensee also proposed to amend its licence by deleting the following condition of licence:

The licensee shall, as an exception to the percentage of Canadian musical selections set out in section 2.2(8) of the *Radio Regulations, 1986*, in any broadcast week, devote a minimum of 45% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

The licensee proposed instead to adhere to section 2.2(8) of the *Radio Regulations, 1986* (the Regulations).

3. In its application, the licensee indicated that it may have failed to comply with the following condition of licence, set out in Broadcasting Decision 2005-255:

The licensee shall devote at least \$274,820 in direct expenditures to the promotion of Canadian artists over seven consecutive years beginning in

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

the first year of operations. The minimum yearly contribution during the licence term shall be \$39,260 per broadcast year.

4. 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 CFTX-FM, were in non-compliance with the requirements of the Regulations in regard 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.”
5. 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.
6. On 16 March 2011, the Commission issued Broadcasting Notice of Consultation 2011-188. In that notice, the Commission noted that 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 30 May to 5 June 2010 and between 6:00 a.m. and 6:00 p.m. Monday through Friday of that same week, as well as with section 15 of the Regulations relating to contributions to Canadian content development (CCD) for the 2008-2009 and 2009-2010 broadcast years. 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).
7. 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.
8. The Commission received interventions in support of the application, an intervention in opposition, and comments. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca, under “Public Proceedings.”

Interventions and reply

9. 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 requested that the Commission be vigilant in enforcing strict adherence to its own regulatory provisions.

10. 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, ADISQ expressed concern that RNC wishes to delete the condition of licence requiring the station to devote 45% of its musical selections from content category 2 to Canadian selections broadcast in their entirety — a condition of licence that RNC had proposed and that had given it an advantage when its licence was issued in 2005. ADISQ also criticized the numerous changes to the station's format over the past three years and the fact that, under the proposed new format, it is possible that the station will not broadcast selections by emerging artists in the next licence term.
11. SOCAN supported ADISQ's position and the solutions that it proposed.
12. In its reply, RNC submitted that the station's apparent non-compliance referred to by the Commission related only to the use of montages. According to RNC, its montages were prepared according to the definition set out in the Regulations, and it believed that the montages were in compliance with that definition. Moreover, RNC requested that the Commission formulate an operational definition of a montage that would enable licensees to determine in advance whether their montages would be counted as such by the Commission.
13. After examining the public record for this application in light of applicable policies and regulations, the Commission considers that it must address the following issues: the broadcast of montages, the broadcast of FVM, the licensee's non-compliance relating to its contributions to CCD, and the licensee's request to delete a condition of licence.

Regulatory framework

Montages

14. 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.”
15. 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.

16. 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

17. 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.

18. In paragraph 38 of Broadcasting Public Notice 2006-158, 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

19. 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 related 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.

20. When the licence for CHOI-FM Québec was renewed in 2002, the Commission considered the notion of interruption in montages. In Broadcasting Decision 2002-189, the Commission indicated the following:
54. The discussion at the hearing related to montages dealt primarily with the notion of interruption. Genex submitted that there were no interruptions in the montages rejected by the Commission because the music was always playing, even where there was a voice over. According to the Commission's analyses of CHOI-FM's programming, it is very clear that the rejected montages included interruptions and did not feature musical tie-ins between the selections. These montages were therefore considered to be a series of shortened selections, rather than a single selection, when calculating CHOI-FM's compliance with the requirements of the Radio Regulations respecting French-language vocal music.
21. In the present case, the Commission's analysis revealed that the licensee broadcast montages that contained interruptions between musical excerpts. The Commission therefore disqualified those montages, which resulted in the licensee being in non-compliance with the regulatory levels of FVM that the station is required to broadcast. Specifically, the licensee broadcast 63.1% FVM for the broadcast week analyzed and 50% Monday to Friday from 6 a.m. to 6 p.m. of that same week.
22. Although the disqualification of the montages also resulted in a decrease in the percentage of Canadian content broadcast by the licensee, the Commission notes that the licensee was in compliance with its condition of licence requiring it to devote a minimum of 45% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.
23. In general, the Commission considers that the time allocated to the broadcast of non-Canadian English-language music through montages is cause for concern. However, the Commission's analysis of CFTX-FM's logger tapes and music list for the week of 30 May to 5 June 2010 revealed that the 28 montages broadcast by the licensee represented only 4.6% of the 126 hours of programming broadcast that broadcast week.
24. At the hearing, the Commission asked RNC 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.
25. In response to the Commission's request, RNC 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.

26. In the present case, the Commission notes that the montages counted as a single musical selection by RNC accounted for only 4.6% of the broadcast week analyzed, that the montages were neither too numerous nor too long, and that they contained excerpts of Canadian musical selections. Further, the Commission considers that RNC did not use those montages to circumvent the regulatory requirements concerning FVM and Canadian content. The Commission therefore considers that the licensee would have used montages in compliance with regulatory objectives if they had not contained interruptions.
27. 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.

Contributions to Canadian content development

28. The licensee failed to allocate the full amount of its CCD contributions for the 2007-2008 and 2008-2009 broadcast years. Specifically, the contributions made by the licensee show a shortfall of \$260 for the 2007-2008 broadcast year and of \$9,260 for the 2008-2009 broadcast year.
29. The Commission notes that those shortfalls were paid in 2010 and in 2011. The Commission reminds the licensee that CCD contributions must be made during the broadcast year in question, and specifically by 31 August of each broadcast year.

The licensee's request to delete a condition of licence

30. The licensee requested the deletion of its condition of licence requiring it to devote, in any broadcast week, as an exception to the percentage of Canadian musical selections set out in section 2.2(8) of the Regulations, a minimum of 45% of its musical selections from content category 2 to Canadian musical selections broadcast in their entirety. RNC submitted that the station's format change to classic rock would make it more difficult for the station to comply with this condition of licence. RNC added that the format change could help rectify its financial situation.

Commission's analysis and decision

31. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to dealing with non-compliance by radio stations. In that information bulletin, the Commission indicated that it would no longer automatically deny applications for licence amendments by licensees found in non-compliance, but would instead take into account factors such as the quantity, recurrence and seriousness of the non-compliance, as well as the relationship between the licence amendment application and the instance of non-compliance.

32. In this case, the Commission notes that the licensee is in compliance with the Canadian content level requirements. In light of the factors listed above and the licensee's precarious financial situation, the Commission considers it appropriate to delete the following condition of licence:

The licensee shall, as an exception to the percentage of Canadian musical selections set out in section 2.2(8) of the *Radio Regulations, 1986*, in any broadcast week, devote a minimum of 45% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

33. Accordingly, the licence will henceforth be subject to the provisions set out in section 2.2(8) of the Regulations regarding the broadcast of Canadian content.

Conclusion

34. In Broadcasting Information Bulletin 2011-347, 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.

35. 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.

36. As indicated above, the disqualification of RNC's montages has resulted in the licensee's non-compliance with regulatory requirements relating to the level of FVM that must be broadcast by the station. Therefore, in accordance with its revised approach to non-compliance by radio stations, the Commission deems it appropriate to renew the licence for CFTX-FM for a short-term period. In addition, the Commission 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 CFTX-FM Gatineau from 1 April 2012 to 31 August 2016 under the terms and **conditions of licence** set out in the appendix to this decision.

Employment equity

37. 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 must be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2011-727

Term and conditions of licence

Term

The licence will be in effect from 1 April 2012 to 31 August 2016.

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. In the 2011–2012 broadcast year, the licensee shall devote at least \$39,260 in direct expenditures to the promotion of Canadian artists.