



Broadcasting Decision CRTC 2012-449

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Route reference: 2012-224

Additional reference: 2012-224-1

Ottawa, 21 August 2012

CJNE FM Radio Inc.
Nipawin, Saskatchewan

Application 2011-1686-4, received 21 December 2011
Public hearing in the National Capital Region
19 June 2012

CJNE-FM Nipawin – Licence renewal

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CJNE-FM Nipawin from 1 December 2012 to 31 August 2014. This short-term renewal will allow for a review of the licensee's compliance with the Radio Regulations, 1986 and its conditions of licence at an earlier date.*

Introduction

1. The Commission received an application by CJNE FM Radio Inc. (CJNE Radio) to renew the broadcasting licence for the English-language commercial radio programming undertaking CJNE-FM Nipawin, which expires 30 November 2012.¹ The Commission did not receive any interventions concerning this application.
2. The Commission renewed the licence for CJNE-FM for a short term from 1 January 2009 to 31 August 2012 in Broadcasting Decision 2008-348. The short-term renewal resulted from the licensee's failure to comply with its conditions of licence relating to Canadian talent development (CTD), which is now known as Canadian content development (CCD).
3. In Broadcasting Notice of Consultation 2012-224, as amended by Broadcasting Notice of Consultation 2012-224-1 (the Notice), the Commission stated that the licensee may have failed to comply with:
 - sections 9(2), 9(3), and 9(4) of the *Radio Regulations, 1986* (the Regulations) concerning the filing of annual returns and of other information requested by the Commission; and

¹ In Broadcasting Decision 2012-341, the Commission renewed the broadcasting licence for CJNE-FM from 1 September to 30 November 2012.

- section 15 of the Regulations concerning CCD contributions for the 2008-2009, 2009-2010 and 2010-2011 broadcast years.
4. Additionally, following receipt and review of its self-assessment report filed pursuant to section 9(3)(a) of the Regulations by letter dated 31 May 2012, the Commission placed the licensee on notice that it may have failed to comply with sections 2.2(8) and 2.2(9) of the Regulations relating to the broadcast of Canadian musical selections.
 5. In the Notice, the Commission indicated that it intended to inquire into these matters at the 19 June 2012 public hearing and that it expected the licensee to show cause why a mandatory order requiring the licensee to comply with sections 9(2), 9(3) and 9(4) of the Regulations should not be issued.
 6. The Commission advised the licensee that the Commission might also consider recourse to additional measures, including short-term renewal, suspension, non-renewal or revocation of the licence, pursuant to sections 9 and 24 of the *Broadcasting Act* (the Act).
 7. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues to be addressed in its determinations relate to the following:
 - filing of complete annual returns
 - filing of CJNE Radio's self-assessment report
 - adequacy of music lists for CJNE-FM
 - broadcast of Canadian musical selections
 - Canadian content development contributions

Annual returns

8. Section 9(2) of the Regulations states that, on or before 30 November 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 31 August.
9. The licensee was late in filing its annual returns for the 2008-2009, 2009-2010 and 2010-2011 broadcast years by four months, one month and three months respectively. In addition, the 2010-2011 annual return was not accompanied by the required financial statement.
10. In response to a Commission letter dated 23 March 2012, the licensee did not dispute these findings. At the hearing, the licensee indicated that it had not paid proper attention to this regulatory requirement and that it would institute a reminder system to advise it six to eight weeks in advance of the deadline of the need to file its annual returns.

11. With respect to the missing financial statement from the 2010-2011 annual return, the licensee indicated that complications arose from filing its documentation online for the first time. Moreover, the licensee stated that it did not realize that it could have filed the missing documentation by other means, including by fax.

Commission's analysis and decisions

12. The requirement to file annual returns is clearly indicated in the Regulations. The Regulations also clearly set out the form and required date for the filing of these returns. By the licensee's admission, it failed to meet these requirements. The Commission finds that the licensee is in non-compliance with section 9(2) of the Regulations.
13. The Commission notes, however, that after the hearing, the licensee filed the required financial statement on 25 June 2012. The Commission also notes that this is the licensee's first instance of non-compliance in this regard and that, while the returns were late, with the exception of the annual returns filed for the 2010-2011 broadcast year, all were complete when received. The Commission is satisfied with the steps that the licensee has taken to ensure that complete and timely returns will be filed in the future.

Self-assessment reports and music lists

14. Section 9(3) of the Regulations provides as follows:

(3) At the request of the Commission, a licensee shall submit for any period specified by the Commission in its request

(a) the information required by the most recent Station Self-assessment Report form issued by the Commission; and

(b) a list of the musical selections in the order in which they are broadcast by the licensee during that period that includes the title and performer of each musical selection and a legend that identifies

(i) any Canadian musical selection,

(ii) any hit,

(iii) any instrumental selection,

(iv) any content category 3 musical selection, and

(v) the language of the musical selection, where the musical selection is not an instrumental selection.

15. On 17 January 2012, the Commission requested that the licensee file its logger tapes, self-assessment report and music lists for the week of 8 to 14 January 2012. The music lists were received on 24 January 2012, and the logger tapes were received on 26 January 2012. The self-assessment report was filed on 28 March 2012.

Music lists

16. In its analysis, the Commission identified deficiencies with the licensee's music lists. While the licensee listed the musical selections in the proper order, the time at which the selections were broadcast did not coincide with what was heard on the logger tapes. As well, despite the requirement of section 9(3)(b) of the Regulations, Canadian selections and hits were not identified, and the licensee did not provide a legend to explain the coding used by the licensee on the music list.
17. At the hearing, the licensee submitted that the deficiencies in its music lists were a result of its use of older software that it intends to upgrade by late 2012 or early 2013, once its budget permits. The licensee submitted that this software upgrade should allow for the proper identification of musical selections in a manner that is easy to interpret.

Self-assessment report

18. The Commission requested the licensee's self-assessment report on 17 January 2012 asking that the report be provided, along with music lists and logger tapes, by no later than 30 January 2012. While the music lists and logger tapes were provided by the 30 January deadline, the self-assessment report was not received until 28 March 2012. Once received, the self-assessment report appeared to be complete and in compliance with the requirements set out in section 9(3)(a) of the Regulations.

Commission's analysis and decisions

19. Music lists and self assessment reports are important tools used by the Commission in the analysis of a licensee's compliance with its programming obligations. Incomplete, inaccurate or otherwise deficient music lists make the analysis of a licensee's musical programming difficult and affects the ability of the Commission to independently confirm a licensee's programming self-assessment. These difficulties are compounded when the material requested is not filed in a timely manner.
20. In this instance, the licensee admitted difficulties with its current system for generating music lists and indicated that it will take steps to ensure it will be in compliance in the future. Accordingly, the Commission finds that the licensee failed to comply with section 9(3)(b) of the Regulations. However, the Commission is encouraged that the licensee will adopt a new software tool to ensure that its music lists comply with all the requirements set out in the Regulations and expects that its music lists will comply with the Regulations in the future.
21. With regard to the station's self-assessment report, the Commission reminds the licensee that documents required to be filed with the Commission pursuant to the Regulations or a Commission request are to be filed in a timely manner and in line with the dates prescribed either in Commission correspondence or by regulation. The Commission notes the licensee's commitment made at the hearing to devote the proper attention to its regulatory requirements going forward, and the Commission expects that the licensee will do so in the future.

Canadian musical selections

22. Sections 2.2(8) and 2.2(9) of the Regulations require that commercial radio licensees devote at least 35% of all musical selections from content category 2 broadcast during the broadcast week and between 6 a.m. and 6 p.m. Monday to Friday to Canadian selections broadcast in their entirety.
23. For the broadcast week of 8 to 14 January 2012, the licensee's self-assessment report indicated that 22% of all musical selections aired during the broadcast week were Canadian, and that 31% of musical selections broadcast between 6 a.m. and 6 p.m. from Monday to Friday were Canadian.
24. At the hearing, the licensee stated that it had allowed a sales person access to the programming of the station in the month of January in order to broadcast musical material that coincided with a sales campaign. The licensee indicated that it did not properly oversee the work of this individual, which resulted in the shortfall in Canadian content for the week monitored.
25. The licensee affirmed that it was dedicated to the broadcast of Canadian music, indicating that it broadcasts Canadian musical selections by artists that it considers do not receive significant airplay on other commercial stations across the country. The licensee submitted that it broadcasts, and intends to continue to broadcast, certain Canadian musical selections from uncharted or unpublished artists. The licensee explained that it cannot currently count these musical selections toward the station's Canadian content obligations because it has not completed the work necessary to substantiate that the selections meet Canadian content requirements.² The licensee submitted that it has switched its music scheduling back to the way it operated before January and that there is now greater oversight of programming changes. Further, the licensee submitted that it will make sure to exceed the minimum Canadian content obligations set out in the Regulations and that, going forward, it will self-monitor compliance with its Canadian content obligations more regularly.

Commission's analysis and decisions

26. Canadian content requirements are a key component to ensuring that the Canadian broadcasting system meets certain key objectives under the Act relating to Canadian expression, the creation of programming that reflects Canadian values and artistic

² A Canadian selection is, with certain exceptions, a musical selection that meets at least two of the following criteria:

- the music is or lyrics are performed principally by a Canadian
- the music is composed entirely by a Canadian
- the lyrics are written entirely by a Canadian
- the musical selection consists of a live performance that is recorded wholly in Canada, or performed wholly in and broadcast live in Canada.

creativity, and the maximum, and in no case less than predominant use, of Canadian creative and other resources.

27. By the licensee's own admission, it failed to meet its Canadian content requirements for the broadcast week of 8 to 14 January 2012 due to a lack of oversight of its programming. The Commission therefore finds the licensee in non-compliance with sections 2.2(8) and 2.2(9) of the Regulations.
28. However, the Commission is encouraged by the licensee's desire to broadcast new and emerging artists as well as local artists that it considers would otherwise not receive airplay on commercial stations in its market. The Commission expects that this commitment will help ensure that, in the future, the licensee will comply with the Regulations.

Canadian content development

29. Section 15 of the Regulations provides that a licensee of a commercial radio programming undertaking shall make basic annual CCD contributions based on the undertaking's 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 defined in Broadcasting Public Notice 2006-158 (section 15 CCD contributions).
30. Additionally, when the licence was last renewed in Broadcasting Decision 2008-348, a condition of licence was imposed requiring the licensee to make a CTD payment of no less than \$400.00 by no later than 31 August 2009 (condition of licence CTD contribution). This payment was required to make up for a shortfall in CTD payments during the previous licence term.

Contributions by regulation

31. The Commission indicated in the Notice that the licensee may have failed to comply with its obligations relating to its basic annual CCD contributions for the 2008-2009, 2009-2010 and 2010-2011 broadcast years. Specifically, the Commission notes that the licensee did not make any payments in those broadcast years to FACTOR or MUSICACTION, as required by the Regulations. Further, the Commission was concerned about the contributions made to the Northeast Country Music Association (NECMA) as the proofs of payment that the licensee provided appeared inadequate. The proof of payment consisted of an invoice without a cancelled cheque for the 2008-2009 broadcast year, no proof that the licensee's cheque for the 2009-2010 broadcast year was actually cashed, and a handwritten receipt for the 2010-2011 broadcast year.
32. Additionally, Commission records demonstrate that, for the 2008-2009 broadcast year, the licensee made its section 15 CCD contribution late, i.e. on 3 October 2009, which means the payments were made in the 2009-2010 broadcast year. Moreover, for the 2009-2010 broadcast year, the licensee did not make the full section 15 CCD

contribution. However, for the 2010-2011 broadcast year, the licensee overpaid by making a contribution of \$800.

33. At the hearing, the licensee submitted that it was unaware that it was required to make contributions to FACTOR or MUSICACTION and considered that its contributions to the NECMA were sufficient to meet its regulatory CCD obligations. The licensee also indicated that it was aware of the CCD contribution that it would be required to make going forward given its current revenues. It also indicated that it understood what would be required with respect to the filing of proofs of payment of CCD contributions and committed to do so, on time, in the future.

Amounts required by condition of licence

34. When questioned at the hearing about its adherence to its condition of licence, the licensee indicated that it felt that it had made up the shortfall over the course of the licence term, citing the 2010-2011 broadcast year in which it had made an \$800 contribution to CCD. The Commission notes that this contribution, as specified in the condition of licence, was to be made by 31 August 2009.

Commission's analysis and decisions

Payment to FACTOR or MUSICACTION

35. While the licensee asserted that it was in compliance with its condition of licence and the Regulations, it nevertheless admitted at the hearing to being out of compliance with the Regulations as it pertained to its mandatory contributions to FACTOR or MUSICACTION. In this respect, the Commission notes that the licensee did not make any payments to FACTOR or MUSICACTION as required pursuant to section 15(4) of the Regulations. Accordingly, the Commission finds the licensee to be in non-compliance with section 15(4) of the Regulations.

Late payments and contribution amounts

36. With respect to the timing of payments and amounts, the Commission notes that the licensee did not make its section 15 CCD contributions on time for the 2008-2009 broadcast year. The Commission also notes that the licensee experienced a shortfall for the 2009-2010 broadcast year. While the proofs of payment were apparently deficient, on the basis of the record and the fact that the NECMA is a national music industry association, thereby qualifying as an eligible initiative, the Commission is satisfied, in this instance, that the licensee made the contributions to an eligible initiative.
37. Accordingly, the Commission finds that the licensee has failed to comply with Section 15(2) of the Regulations. The Commission reminds the licensee that going forward, it must make payments in the specific amount outlined in section 15 of the Regulations and that these payments must be made in full by no later than 31 August of each year.

38. The licensee is also reminded that the Commission has provided clear notice to the radio broadcasting industry of the types of proof of payment that it requires to be filed with annual returns. This information is set out in Broadcasting Information Bulletin 2011-795 in addition to the annual return forms themselves. The Commission therefore expects that, going forward, the licensee will respect these requirements and comply fully with section 9(2) of the Regulations as they pertain to the filing of annual returns.
39. Although the licensee did not contribute in a manner consistent with the timelines required in the Regulations, the Commission notes that the overall amount of the section 15 CCD contributions made by the licensee over the course of the 2008-2009 to 2010-2011 broadcast years exceeded the total overall basic annual contribution amount required pursuant to section 15(2) of the Regulations by \$200. Accordingly, the licensee is not required to make up any shortfall with respect to its section 15 CCD contributions.
40. The Commission also finds that the licensee did not make its condition of licence CTD contribution by the 31 August 2009 deadline. As well, even if it were to apply the \$200 excess of the section 15 CCD contributions to the condition of licence CTD contribution, the licensee would nevertheless fall short by \$200. Accordingly, the Commission finds the licensee in non-compliance with its condition of licence 3 relating to CTD contributions. The licensee will therefore be required to make up this shortfall in addition to its required annual contributions under section 15 of the Regulations and to file acceptable proof of payment with the Commission. A condition of licence requiring the licensee to do so by no later than 1 December 2012 is set out in the appendix to this decision.

Conclusion

41. 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.
42. The Commission notes that the licensee has failed to comply with a number of regulations and a condition of licence. However, the Commission finds that the licensee has now understood the gravity of the situation and the inadequacy of its compliance with the Regulations and its conditions of licence. The Commission also expects that the licensee will commit to improving its performance in this regard over the course of the next licence term.
43. In accordance with its revised practice regarding radio non-compliance, the Commission considers that a short-term renewal period of two years would be appropriate. Accordingly, the Commission **renews** the broadcasting licence for the

English-language commercial radio programming undertaking CJNE-FM Nipawin from 1 December 2012 to 31 August 2014. This short-term renewal will allow for a review of the licensee's compliance with the Regulations and its conditions of licence at an earlier date.

44. The Commission reiterates the importance it places on a licensee's fulfillment of its regulatory obligations and its conditions of licence. The Commission notes that it may consider recourse to additional measures, including further short-term renewal and mandatory orders or the suspension, non-renewal or revocation of the licence pursuant to sections 9 and 24 of the Act, should CJNE-FM once again breach the Regulations or any of its conditions of licence.

Secretary General

Related documents

- *Administrative renewals*, Broadcasting Decision CRTC 2012-341, 22 June 2012
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2012-224, 18 April 2012, as amended by Broadcasting Notice of Consultation CRTC 2012-224-1, 11 May 2012
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *CJNE-FM Nipawin and its transmitter – Licence renewal*, Broadcasting Decision CRTC 2008-348, 10 December 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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

Appendix to Broadcasting Decision CRTC 2012-449

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 addition to the basic annual contribution to Canadian content development set out in section 15 of the *Radio Regulations, 1986*, the licensee shall, make a contribution of \$200 by no later than 1 December 2012. The licensee shall allocate this amount to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006. The licensee shall also file acceptable proof of payment with the Commission by no later than 1 December 2012.