



## Broadcasting Decision CRTC 2012-454

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Route reference: 2012-224

Additional reference: 2012-224-1

Ottawa, 24 August 2012

**Corus Radio Company**  
Brampton, Ontario

*Application 2012-0025-3, received 25 January 2012*  
*Public hearing in the National Capital Region*  
*19 June 2012*

### **CFNY-FM Brampton – Licence renewal**

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CFNY-FM Brampton from 1 December 2012 to 31 August 2017. This short-term licence renewal will allow for a review of the licensee’s compliance with the Radio Regulations, 1986 and with its conditions of licence at an earlier date.*

#### **Introduction**

1. The Commission received an application by Corus Radio Company (Corus) to renew the broadcasting licence for the English-language commercial radio programming undertaking CFNY-FM Brampton, which expires 30 November 2012.<sup>1</sup> The Commission received interventions in support of the application, and one intervention that provided comments. The public record of this proceeding is available on the Commission’s website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under “Public Proceedings.”
2. In Broadcasting Notice of Consultation 2012-224, as amended by Broadcasting Notice of Consultation 2012-224-1, the Commission stated that the licensee may have failed to comply with section 15 of the *Radio Regulations, 1986* (the Regulations) concerning its contribution to Canadian content development (CCD) for the 2009-2010 broadcast year. The Commission also stated that the licensee may have failed to comply with sections 2.2(8) and 2.2(9) of the Regulations as they relate to the requirement to devote 35% or more of musical selections from category 2 (Popular music) to Canadian selections broadcast in their entirety.

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<sup>1</sup> In Broadcasting Decision 2012-341, the Commission administratively renewed the broadcasting licence for CFNY-FM from 1 September to 30 November 2012.

3. In that notice, the Commission indicated that it intended to inquire into these matters and that it expected the licensee to show cause at the hearing as to why a mandatory order requiring it to comply with sections 2.2(8) and 2.2(9) of the Regulations should not be issued.
4. 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*.

### **Commission's analysis and decisions**

5. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:
  - contributions to CCD for the 2009-2010 broadcast year; and
  - failure to comply with sections 2.2(8) and 2.2(9) of the Regulations for the broadcast week of 8 to 14 January 2012.

### **Contributions to CCD for the 2009-2010 broadcast year**

6. Pursuant to section 15 of the Regulations, a licensee must devote 60% of its basic annual CCD contribution to FACTOR or MUSICACTION.
7. The Commission notes that the licensee did not file adequate proof of payment with its annual return to demonstrate that it had contributed \$18,239.35 to FACTOR for the 2009-2010 broadcast year as required by the Regulations.
8. In response to a Commission letter, dated 16 March 2012, the licensee submitted that it had made the required payment and therefore was in full compliance with its CCD obligations. Corus admitted, however, that it neglected to follow up with FACTOR to obtain a confirmation receipt for payments received for the 2009-2010 broadcast year. When this deficiency was brought to the licensee's attention, Corus immediately provided, in a letter dated 20 March 2012, the required proof that FACTOR had received payment from Corus for that broadcast year.
9. The licensee explained that its payments to FACTOR are made by electronic funds transfer (EFT) and that it had expected that the stamped invoice it submitted as part of its annual return would constitute acceptable proof of payment. Corus has confirmed that it has instituted an internal policy to ensure that, going forward, it will obtain a receipt confirmation for all CCD payments made by EFT and file it with its annual return.

10. The Commission notes that the receipt confirmation from FACTOR submitted to the Commission on 20 March 2012 confirms that the requisite amount of \$18,239.35 was received on time by FACTOR on 27 July 2010. In light of the above, the Commission is satisfied that the licensee has complied with the CCD contribution requirements in section 15 of the Regulations and that the measures put in place by the licensee to ensure its continued compliance are sufficient.

**Failure to comply with sections 2.2(8) and 2.2(9) of the Regulations for the broadcast week of 8 to 14 January 2012**

11. Sections 2.2(8) and 2.2(9) of the Regulations stipulate that:

2.2(8) Except as otherwise provided under a licensee's condition of licence that refers expressly to this subsection and subject to subsection (6)1, an A.M. or F.M. licensee licensed to operate a commercial station, community station or campus station shall, in a broadcast week, devote 35% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

2.2(9) Except as otherwise provided under a licensee's condition of licence, and subject to subsection (6), an A.M. or F.M. licensee licensed to operate a commercial station shall, between 6:00 a.m. and 6:00 p.m., in any period beginning on Monday of a week and ending on Friday of the same week, devote 35% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

12. In a letter dated 17 January 2012, the Commission requested that Corus provide its logs, logger tapes and a self-assessment report relating to the programming broadcast on CFNY-FM during the week of 8 to 14 January 2012. The Commission asked that this information be filed by no later than 30 January 2012.
13. On 25 January 2012, as a part of its application to renew the broadcasting licence for CFNY-FM, and in advance of filing the documentation requested in the Commission's letter dated 17 January 2012, the licensee admitted its non-compliance with sections 2.2(8) and 2.2(9) of the Regulations. In its self-assessment report, the licensee stated that only 34.2% of its category 2 musical selections broadcast during the broadcast week and for the period of 6:00 a.m. to 6:00 p.m., Monday to Friday, were Canadian musical selections.
14. The Commission's own analysis served to corroborate Corus' findings for that broadcast week but found that, in actuality, 34.4% of the category 2 musical selections broadcast by the licensee between 6:00 a.m. and 6:00 p.m., Monday to Friday of the same week, were Canadian musical selections. These findings were not disputed by the licensee.
15. Further to its admission of non-compliance, in a letter dated 6 March 2012, Corus contacted the Commission of its own accord to explain the cause of the non-compliance and measures that had already been taken to remedy the situation and prevent its recurrence.

16. In particular, Corus indicated that its non-compliance was due to human error, which resulted in a non-Canadian musical selection being mistakenly coded in its music software database as a Canadian selection. Corus noted that it had previously implemented measures to ensure compliance, including the implementation of an internal policy that required all of Corus' stations to broadcast no less than 35.5% Canadian content over the broadcast week, and between 6:00 a.m. and 6:00 p.m., Monday to Friday of the same week. This internal Canadian content policy allowed a margin of error of approximately seven plays per week. Corus noted, however, that during the broadcast week monitored by the Commission, the song in question that brought about the non-compliance was in heavy rotation, and was played 31 times, which exceeded the margin of error that was put in place to ensure compliance.
17. Corus submitted that it had since reviewed its internal monitoring and compliance practices at CFNY-FM and, among other measures, had revised its internal Canadian content policies for CFNY-FM, to require a Canadian content level of 38% over the broadcast week, and between 6:00 a.m. and 6:00 p.m., Monday to Friday. In addition to measures related specifically to CFNY-FM Corus indicated it had taken its reaction to the instance of non-compliance a step further by revising its internal Canadian content policies for all its music stations, which now must adhere to a Canadian content level of 36% over the broadcast week, and between 6:00 a.m. and 6:00 p.m., Monday to Friday of the same week.
18. In light of all of the above, the Commission finds the licensee in non-compliance with sections 2.2(8) and 2.2(9) of the Regulations. The Commission notes, however, that the licensee has taken significant action to remedy the situation. The Commission also acknowledges that Corus has been forthcoming throughout this process, clearly admitting its non-compliance and doing so without needing to be questioned at length by the Commission. The Commission is also of the view that the licensee has taken full responsibility for its actions in this regard and considers that the measures it has taken will help ensure that not only CFNY-FM, but all other Corus radio stations will comply with their regulatory obligations.

## **Conclusion**

19. The Commission notes that CFNY-FM has been found in non-compliance during three consecutive licence terms. In Broadcasting Decision 2006-394, the Commission granted a four-year short-term licence renewal, until 31 August 2010 to CFNY-FM, based on its failure to devote 35% or more of musical selections from category 2 (Popular music) to Canadian selections broadcast in their entirety. The Commission granted a two-year short-term licence renewal to CFNY-FM in Broadcasting Decision 2010-647 based on its failure to comply with its condition of licence relating to CCD contributions.

20. Although the Commission is concerned that this is the third instance of non-compliance by CFNY-FM in as many licence terms, the Commission notes that Corus acknowledged and took full responsibility for this non-compliance and demonstrated that it has taken the appropriate measures to ensure future compliance with its regulatory obligations related to the broadcast of Canadian content.
21. The Commission further notes that, although Corus demonstrated its compliance with its CCD obligations for the 2009-2010 broadcast year, the licensee nonetheless took steps to avoid future confusion about the status of its required payments to FACTOR.
22. Consistent with the revised approach to non-compliance by radio stations set out in Broadcasting Information Bulletin 2011-347, and taking into account the circumstances related to the non-compliance and the immediate measures taken by the licensee to prevent further non-compliance, the Commission considers that a short-term licence renewal is appropriate for CFNY-FM. Accordingly, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CFNY-FM Brampton from 1 December 2012 to 31 August 2017. This short-term licence renewal will allow for a review of the licensee's compliance with the Regulations and with its conditions of licence at an earlier date. The licensee shall adhere to the **conditions** set out in the appendix to Broadcasting Regulatory Policy 2009-62.

### **Employment equity**

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

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
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *CFNY-FM Brampton – Licence renewal*, Broadcasting Decision CRTC 2010-647, 31 August 2010
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009

- *CFNY-FM Brampton – Licence renewal*, Broadcasting Decision CRTC 2006-394, 23 August 2006
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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