



## Broadcasting Decision CRTC 2012-567

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Route reference: 2012-224

Additional reference: 2012-224-1

Ottawa, 16 October 2012

**Cogeco Diffusion Acquisitions inc.**  
Montréal, Quebec

*Application 2012-0024-5, received 4 January 2012*  
*Public hearing in the National Capital Region*  
*19 June 2012*

### **CKOI-FM Montréal – Licence renewal**

*The Commission **renews** the broadcasting licence for the French-language commercial radio station CKOI-FM Montréal from 1 December 2012 to 31 August 2015. This short-term licence renewal will allow for an earlier review of the licensee's compliance with the Radio Regulations, 1986 and its conditions of licence.*

#### **Introduction**

1. The Commission received an application from Cogeco Diffusion Acquisitions inc. (Cogeco) to renew the broadcasting licence for the French-language commercial radio programming undertaking CKOI-FM Montréal. The licence expires on 30 November 2012.<sup>1</sup>
2. The licensee proposed to delete the following condition of licence relating to Canadian talent development (CTD) set out in Broadcasting Decision 2005-430:

*In Public Notice CRTC 1996-114 entitled **Implementation of the New Approach to Canadian Talent Development**, the Commission indicated that it would impose, as a condition of licence, any specific commitments made by licensees to direct money for Canadian talent development specifically to MusicAction. Accordingly, it is a condition of licence that the licensee make an annual payment to MusicAction of \$27,000.*

3. Instead, the licensee proposed to meet the requirements set out in section 15 of the *Radio Regulations, 1986* (the Regulations).
4. In Broadcasting Notice of Consultation 2012-224, as corrected by Broadcasting Notice of Consultation 2012-224-1, the Commission noted that the licensee appeared

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<sup>1</sup> The Commission administratively renewed CKOI-FM's licence from 1 September to 30 November 2012 in Broadcasting Decision 2012-341.

to be in non-compliance with section 2.2(9) of the Regulations concerning the broadcast of Canadian musical selections during the broadcast week of 8 to 14 January 2012, section 9(2) of the Regulations relating to the submission of annual returns and section 15 of the Regulations concerning its annual contributions to Canadian content development (CCD) for the 2010-2011 broadcast year.

5. The Commission also noted that the licensee had appeared before it at a hearing regarding radio montages. This hearing led to Broadcasting Decision 2011-726, in which the Commission imposed a new condition of licence on the licensee regarding montages which came into effect on 1 April 2012. The Commission stated that it would not analyze CKOI-FM's performance regarding the levels of French-language musical selections broadcast (sections 2.2 (5) and 2.2(10) of the Regulations) in the context of this renewal hearing. The Commission notes that Cogeco committed to continuing to comply with this condition of licence throughout the next licence term.
6. As part of this proceeding, the Commission received and considered an intervention by the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ). The public record for this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

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

7. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
  - non-compliance with section 2.2(9) of the Regulations concerning the broadcast of Canadian musical selections between 6 a.m. and 6 p.m. from Monday to Friday;
  - non-compliance with section 15 of the Regulations concerning annual CCD contributions; and
  - non-compliance with section 9(2) of the Regulations concerning the submission of annual returns.

### **Non-compliance with section 2.2(9) of the Regulations**

8. Section 2.2(9) of the Regulations states that between 6 a.m. and 6 p.m., in any period beginning on a Monday and ending on the Friday of a given week, a licensee that is licensed to operate a commercial station shall devote at least 35% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety. After having examined the logger tape of 9 January 2012 and the music lists for the week of 8 to 14 January 2012, the Commission notes that the licensee devoted 30.7% of the category 2 musical selections broadcast between 6 a.m. and 6 p.m. from Monday to Friday to Canadian musical selections broadcast in their entirety.

9. The Commission notes that Cogeco has had two opportunities (26 March 2012 and 11 April 2012) to provide additional information regarding the Canadian content of certain musical selections broadcast several times throughout the week of 8 to 14 January 2012 in order to confirm its Canadian content and increase CKOI-FM's Canadian content level. The Commission specifically listed the documents that it would accept as evidence based on the MAPL system, but Cogeco was not able to provide the documents to the Commission. On the contrary, Cogeco stated that it was becoming increasingly difficult, even impossible in some cases, to come to a determination as to the Canadian origin of a selection using the MAPL method, as set out in section 2.2(2) of the Regulations.
10. Cogeco did, however, acknowledge a coding error for four selections and has made the necessary corrections to its data filing system. The licensee added that music programmers now perform spot checks and daily checks to prevent this error from recurring. In addition, the licensee stated that it intended to exceed the minimum regulatory requirements, as it was attempting to do in other regards, in order to correct errors in coding, qualification, handling or any other errors that may occur, in good faith, and thus to correct any shortcomings resulting from the disqualification of a selection for any reason.
11. In its intervention, ADISQ stated that the Canadian content broadcast by CKOI-FM during peak hours was declining due to the tendency to broadcast more non-Canadian French-language musical selections, which are often bilingual versions of foreign hits. ADISQ stated that it expected the Commission to take the necessary steps to ensure that CKOI-FM meets the requirements for Canadian content throughout its next licence term.
12. In its reply, Cogeco indicated that it had already taken the necessary measures to improve its system. Cogeco submitted that the station should not be penalized for its error because it did not intend to violate the Regulations.

#### **Commission's analysis**

13. The Commission wishes to emphasize that the onus is on the licensee to demonstrate that the selections it claims are Canadian meet the criteria of the MAPL system. Despite the licensee's good intentions, the Commission considers that the non-compliance was a result of a lack of vigilance with regard to the coding of musical selections. The Commission is satisfied with the measures described by Cogeco to improve its system. Nonetheless, in light of the above, the Commission finds that the licensee did not comply with section 2.2(9) of the Regulations.

#### **Non-compliance with section 15 of the Regulations**

14. Section 15 of the Regulations states that a licensee that is licensed to operate a commercial station shall make a basic annual contribution to eligible CCD initiatives. The Commission notes that the licensee did not provide any proof of payment for its basic CCD contribution for the 2010-2011 broadcast year with its annual return.

15. In response to a request for information from Commission staff on 22 March 2012, Cogeco submitted proofs of payment for its CCD contribution for the 2010-2011 broadcast year. Cogeco stated that it regretted that the proofs were filed late and not with the station's annual return, but that this filing did not change the station's compliance as regards its CCD contributions.
16. ADISQ asked that the Commission clarify the situation and that in the event of a violation it require that shortfalls be fulfilled as soon as possible and that a fair share be allocated to MUSICACTION.
17. The Commission notes that the proof shows that the licensee paid its basic CCD contribution for the 2010-2011 broadcast year in accordance with section 15 of the Regulations.

#### **Non-compliance with section 9(2) of the Regulations**

18. 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.
19. Further, according to Broadcasting Information Bulletin 2009-251, licensees are required to provide details about the CCD initiatives funded by their stations with their annual returns. These details must include the name of the recipient of the CCD payment, the amount paid and the cheque or invoice number, as well as copies of cancelled cheques or receipts, and a document attesting the eligibility of the initiative, as set out in Broadcasting Information Bulletin 2011-795. The Commission notes that no proof of payment of contributions in the 2010-2011 broadcast year was included with the return.
20. The licensee stated that its annual return for the 2010-2011 broadcast year was filed before 30 November 2011. The licensee did not propose any measures to rectify the situation and prevent a recurrence. The licensee added that the Commission should not impose a sanction on the station.
21. The Commission notes that licensees are required to ensure that all appropriate forms and documents are included with their annual returns and filed by the deadline. In light of the missing information in the 2010-2011 return, the Commission concludes that the licensee was in non-compliance with section 9(2) of the Regulations for that broadcast year. The Commission expects the licensee to provide all necessary proofs with its annual return.

#### **Regulatory measures**

22. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach for dealing with non-compliance by radio stations. In particular, 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 relating to the non-compliance, the arguments provided by the licensee and the measures taken to rectify the situation.

23. In accordance with its revised approach for dealing with non-compliance by radio stations set out in Broadcasting Information Bulletin 2011-347, the Commission considers that a short-term renewal for CKOI-FM is appropriate. Accordingly, the Commission **renews** the broadcasting licence for the French-language commercial radio station CKOI-FM Montréal from 1 December 2012 to 31 August 2015, i.e. for a period of three years from the original expiry date of 31 August 2012. This short-term licence renewal will allow for an earlier review of the licensee's compliance with the Regulations and its conditions of licence.
24. In addition, the Commission notes that the condition of licence regarding CTD set out in Broadcasting Decision 2005-430 no longer applies. Accordingly, the Commission **approves** Cogeco's application to delete this condition of licence. The licensee will henceforth be required to comply with the requirements of section 15 of the Regulations.
25. The terms and **conditions of licence** are set out in the appendix to this decision.

Secretary General

#### **Related documents**

- *Administrative renewals*, Broadcasting Decision CRTC 2012-341, 22 June 2011
- *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
- *Requirements for the broadcast of radio montages*, Broadcasting Information Bulletin CRTC 2011-728, 24 November 2011
- *Complaint regarding the broadcast of French-language vocal music by CKOI-FM Montréal*, Broadcasting Decision CRTC 2011-726, 24 November 2011
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Clarifications regarding Canadian content development contributions made by commercial radio stations*, Broadcasting Information Bulletin CRTC 2009-251, 5 May 2009
- *CKOI-FM Montréal – Licence renewal*, Broadcasting Decision CRTC 2005-430, 19 August 2005
- *Implementation of the new approach to Canadian talent development*, Public Notice CRTC 1996-114, 19 August 1996

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

## **Appendix to Broadcasting Decision CRTC 2012-567**

### **Term and Conditions of licence**

#### **Term**

The licence will expire 31 August 2015.

#### **Conditions of licence**

1. The licensee shall adhere to the standard conditions of licence 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 programming broadcast during the broadcast week to montages. For the purposes of this condition, the term “broadcast week” shall have the same meaning as that set out in the *Radio Regulations, 1986*.