



Broadcasting Decision CRTC 2013-463

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Route reference: 2013-220

Ottawa, 30 August 2013

Le5 Communications Inc.
Sudbury and Timmins, Ontario

Applications 2012-1405-6 and 2012-1407-2, received 29 October 2012

CHYC-FM Sudbury, and CHYK-FM Timmins and its transmitters – Licence renewals

*The Commission **renews** the broadcasting licences for the commercial radio stations CHYC-FM Sudbury, and CHYK-FM Timmins and its transmitters CHYK-FM-3 Hearst and CHYX-FM Kapuskasing, from 1 September 2013 to 31 August 2019. These short-term renewals will allow for an earlier review of the licensee's compliance with its conditions of licence and with the Radio Regulations, 1986.*

Introduction

1. Le5 Communications Inc. (LCI) filed applications to renew the broadcasting licences for the commercial radio stations CHYC-FM Sudbury, and CHYK-FM Timmins and its transmitters CHYK-FM-3 Hearst and CHYX-FM Kapuskasing, which expire 31 August 2013.¹
2. The Commission received an intervention regarding these applications from l'Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ). It also received an intervention from the Ontario Ministry of Community Safety and Correctional Services relating to participation of the stations in their jurisdictions in the National Public Alerting System (NPAS). The public record relating to these applications is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
3. As specified in its three-year plan, the Commission will be looking at measures to ensure the participation of Canadian broadcasters and telecommunications service providers in the NPAS. Therefore, the Commission will not impose conditions of licence requiring the participation of broadcasters in the NPAS at this time. However, it expects all licensees to voluntarily participate in the NPAS, so that Canadians receive timely warnings of imminent perils.

¹ The original licence expiry date for these stations was 31 August 2012. These licences were administratively renewed until 31 August 2013 as a result of Broadcasting Decision 2012-447.

Non-compliance

4. In Broadcasting Notice of Consultation 2013-220, the Commission noted that for both stations, the licensee was in apparent non-compliance with requirements relating to contributions to Canadian content development (CCD), the timely filing of annual returns, and the filing of complete annual returns, for various broadcast years.

Canadian content development contributions

5. Section 15 of the *Radio Regulations, 1986* (the Regulations) sets out requirements relating to CCD contributions. LCI is required to make an annual basic CCD contribution for each of the stations CHYC-FM and CHYK-FM. However, the licensee did not make its required CCD contributions for the 2008-2009, 2009-2010 and 2010-2011 broadcast years. The Commission notes, however, that as of November 2012, the licensee had paid all of its CCD contribution shortfalls and had provided the necessary proof of payments.
6. LCI explained that this non-compliance was due to it being unaware of its CCD obligations. It further stated that it would ensure that the required contributions are made in the future.
7. In light of the above, the Commission finds LCI in non-compliance with section 15 of the Regulations relating to annual basic CCD contributions.

Timely filing of annual returns

8. Section 9(2) of the Regulations requires licensees to file annual returns by 30 November of each year for the broadcast year ending the previous 31 August. The specific filing requirements, including the requirement to submit financial statements, are set out in Broadcasting Information Bulletin 2011-795. As noted in Broadcasting Notice of Consultation 2013-220, LCI did not file annual returns for either CHYC-FM or CHYK-FM by the 30 November deadline for the 2009-2010 broadcast year.
9. The licensee stated that the non-compliance was due to a lack of expertise among staff when it purchased the stations in 2008. To rectify the situation, LCI stated that it has hired a person to work on the station's administrative files.
10. In light of the above, the Commission finds LCI in non-compliance with section 9(2) of the Regulations relating to the timely filing of annual returns.

Filing of complete annual returns

11. In addition to the late filing of its annual returns, LCI did not file complete annual returns for either CHYC-FM or CHYK-FM for the 2008-2009, 2009-2010 and 2010-2011 broadcast years. Specifically, its annual returns were missing financial statements. The licensee explained that it was unaware of its obligation to include

financial statements in its annual returns. The Commission notes that the licensee has since submitted all missing financial statements.

12. In light of the above, the Commission finds LCI in non-compliance with section 9(2) of the Regulations relating to the filing of complete annual returns.

Regulatory measures

13. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to 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 of the non-compliance, the arguments provided by the licensee and the measures taken to rectify the situation.
14. As set out in Broadcasting Public Notice 2006-158, initiatives relating to the development of Canadian content and talent will not only help to develop and advance the careers of emerging Canadian artists but will increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. Accordingly, it is important that radio licensees make their required contributions to the development of Canadian content and talent.
15. Further, the Commission notes that compliance with deadlines for the filing of complete annual returns is important because it enables the Commission to monitor a licensee's performance and compliance with regulations and requirements. Accordingly, it considers annual returns that are incomplete and/or filed late to be a serious matter.
16. In addition to filing annual returns on time, it is the licensee's responsibility to ensure that all appropriate forms and documentation are included with the submission of its annual returns, as set out in Broadcasting Information Bulletin 2011-795. If further clarification is required, it is the licensee's responsibility to contact the Commission to obtain further direction.
17. In light of the measures put in place by LCI to avoid non-compliance in the future, the Commission is satisfied that the licensee now understands its regulatory requirements. Nevertheless, the Commission considers that the appropriate measure is a short-term renewal for both CHYC-FM and CHYK-FM, the length of which reflects the nature and extent of the non-compliance.

Conclusion

18. In light of all of the above, the Commission **renews** the broadcasting licences for CHYC-FM Sudbury, and CHYK-FM Timmins and its transmitters CHYK-FM-3 Hearst and CHYX-FM Kapuskasing, from 1 September 2013 to 31 August 2019. For

each station, the licensee shall adhere to the **conditions of licence** set out in Broadcasting Regulatory Policy 2009-62, as amended from time to time.

19. The Commission emphasizes the importance it places on a licensee's fulfillment of its regulatory requirements. The short-term renewals granted in this decision will allow for an earlier review of the licensee's compliance with its conditions of licence and regulatory requirements.

Reminders

20. Pursuant to section 22 of the *Broadcasting Act*, the Commission reminds the licensee that the broadcasting licences for these stations will cease to have any force or effect if the broadcasting certificates issued by the Department of Industry lapse.
21. The Commission further reminds the licensee that it must fulfill all of its remaining tangible benefits commitments pursuant to the terms set out in Broadcasting Decision 2008-296 concerning its acquisition of assets from the Haliburton Broadcasting Group Inc.

Encouragement

22. In accordance with Public Notice 1992-59, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Secretary General

Related documents

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2013-220, 7 May 2013
- *Various radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2012-447, 17 August 2012, as amended by Broadcasting Decision CRTC 2012-447-1, 22 August 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
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009
- *CHYC-FM Sudbury and CHYK-FM Timmins as well as its transmitters – Acquisition of assets*, Broadcasting Decision CRTC 2008-296, 31 October 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

- *Implementation of an employment equity policy*, Public Notice CRTC 1992-59,
1 September 1992

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