



Broadcasting Decision CRTC 2013-531

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Route reference: Part 1 application posted on 1 February 2013

Ottawa, 2 October 2013

Fabmar Communications Ltd.
Chilliwack, British Columbia

Application 2013-0199-4

CHWK-FM Chilliwack – Licence amendment

The Commission approves the licensee's request for flexibility as it relates to CHWK-FM Chilliwack's Canadian content development (CCD) contributions so as to allow the station to apply its CCD over-expenditures to the CCD contributions required in its seventh year of operation.

The application

1. The Commission received an application by Fabmar Communications Ltd. (Fabmar) relating to the English-language commercial radio station CHWK-FM Chilliwack. The Commission did not receive any interventions concerning this application.
2. Specifically, Fabmar indicated that there appeared to be an error in the sum noted in its condition of licence relating to Canadian content development (CCD) contributions. The licensee also indicated that in the 2009-2010 to 2011-2012 broadcast years, it had made CCD contributions in excess of what was required under its current condition of licence and requested that it be allowed to apply these over-expenditures to the CCD contributions required in CHWK-FM's seventh year of operation.

Commission's analysis and decisions

3. CHWK-FM was licensed in 2008 following a public hearing for competing applications to serve Chilliwack. At the time, the applicant¹ made specific CCD commitments that were imposed by condition of licence in Broadcasting Decision 2008-116. The condition of licence reads as follows:

In addition to its basic annual Canadian content development contribution, the licensee shall, upon commencement of operations, contribute \$954,055 over seven consecutive broadcast years to the promotion and development of Canadian

¹ The licensee at the time was known as Radio CJVR Ltd. However, on 20 October 2010, it changed its name to Fabmar Communications Ltd.

content, broken down as follows: Year 1: \$72,750; Year 2: \$80,875; Year 3: \$94,469; Year 4: \$143,391; Year 5: \$167,205; Year 6: \$190,000; and Year 7: \$204,465.

The licensee shall allocate 20% of the amount for each broadcast year noted above to FACTOR.

The remaining amounts of this additional contribution shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

4. As part of its examination of Fabmar's current application, the Commission has verified the CCD commitments made by the licensee in its application at the time of licensing in order to confirm the accuracy of the CCD commitments noted in CHWK-FM's condition of licence. The Commission finds that there is no error in the total amount of CCD contributions to be expended over seven consecutive broadcast years. However, as a result of an administrative error, the CCD contribution in Year 6 (\$190,000) was incorrectly quoted in the decision and should have read \$190,900, as per the original commitment made by the licensee.
5. In light of the above, the Commission corrects condition of licence 4 as set out in Broadcasting Decision 2008-116 as follows:

In addition to its basic annual Canadian content development contribution, the licensee shall, upon commencement of operations, contribute \$954,055 over seven consecutive broadcast years to the promotion and development of Canadian content, broken down as follows: Year 1: \$72,750; Year 2: \$80,875; Year 3: \$94,469; Year 4: \$143,391; Year 5: \$167,205; **Year 6: \$190,900**; and Year 7: \$204,465.

The licensee shall allocate 20% of the amount for each broadcast year noted above to FACTOR.

The remaining amounts of this additional contribution shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

6. With respect to the licensee's request to apply its CCD over-expenditures to the CCD contributions required in CHWK-FM's seventh year of operation, the Commission notes that CHWK-FM began operations in February 2009. As set out in Broadcasting Information Bulletin 2009-251, the Commission generally requires a licensee to make a pro-rated payment for the first year of operation to meet its over-and-above CCD commitment for that year. In other words, the licensee is required to pay an amount representing the number of months the station was in operation during that broadcast year. However, the total CCD amount for the station's first seven years of operation does not change. The licensee is required to contribute the remainder of its

contribution for its first year of operation in its seventh full broadcast year. In such cases, the licensee must contribute the total over-and-above CCD amount over seven consecutive full broadcast years following the commencement of operations.

7. Accordingly, given that CHWK-FM began broadcasting in February 2009, the licensee should have made a pro-rated CCD contribution in the broadcast year ending 31 August 2009 of \$42,438, representing the seven months of the 2008-2009 broadcast year in which the station operated. However, the Commission's analysis has revealed that CHWK-FM contributed \$11,500, representing a shortfall of \$30,938 for that broadcast year. Further, the Commission's analysis revealed that no contributions to FACTOR were made in that broadcast year. However, the Commission notes that the licensee repaid the shortfalls, including the contribution to FACTOR, in the following broadcast years. The Commission's analysis has also confirmed that Fabmar has made over-expenditures to CCD with respect to its over-and-above CCD contributions totaling \$7,163 over the 2009-2010 to 2011-2012 broadcast years.
8. In light of the above, the Commission considers it appropriate to grant the flexibility requested so that CHWK-FM can apply the over-expenditure of \$7,163 to the CCD contributions required in its seventh year of operation in the 2014-2015 broadcast year.
9. The Commission reminds the licensee that the over-and-above CCD contribution it will be required to make in its sixth year of operations (the 2013-2014 broadcast year) will be in the amount of \$190,900, as noted in the corrected condition of licence set out above.
10. The Commission considers that initiatives relating to the development of Canadian content not only help to develop and advance the careers of emerging Canadian artists but 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.
11. As noted in Broadcasting Information Bulletin 2009-251, if a payment is made after 31 August, the licensee will have failed to comply with its obligation to make CCD contributions during the applicable broadcast year. Furthermore, annual contributions required by condition of licence cannot be deferred in whole or in part to any subsequent broadcast year unless prior authorization is sought and obtained from the Commission. With the shortfall identified for the 2008-2009 broadcast year, it would therefore appear that Fabmar is in non-compliance with its condition of licence with respect to over-and-above CCD contributions.
12. The Commission notes that Fabmar has made up the shortfalls and has sought the Commission's approval to credit the resulting CCD over-expenditures to the CCD contribution required in CHWK-FM's seventh year of operation. The Commission expects that, going forward, the licensee will comply with its CCD obligations.

13. Since the current licence term for CHWK-FM expires on 31 August 2014, the Commission will address the apparent non-compliance relating to CCD contributions, as well as examine the licensee's overall compliance with its regulatory obligations, at the station's licence renewal.

Secretary General

Related documents

- *Clarifications regarding Canadian content development contributions made by commercial radio stations*, Broadcasting Information Bulletin CRTC 2009-251, 5 May 2009
- *Licensing of a new radio station to serve Chilliwack, British Columbia*, Broadcasting Decision CRTC 2008-116, 30 May 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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