



Broadcasting Decision CRTC 2013-650

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Route reference: 2013-218

Additional reference: 2013-218-1

Ottawa, 4 December 2013

RNC MÉDIA Inc.
Donnacona, Quebec

Application 2012-0334-8, received 15 March 2012

CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière – Licence renewal

*The Commission **renews** the broadcasting licence for the French-language commercial radio station CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière from 1 January 2014 to 31 August 2017. This short-term renewal will allow for an earlier review of the licensee's compliance with its regulatory requirements.*

*In addition, the Commission **denies** the licensee's request to delete two conditions of licence requiring that it maintain a studio in Donnacona and broadcast at least 14 hours of local programming produced at this studio and targeting residents of the Portneuf area.*

The application

1. RNC MÉDIA Inc. (RNC) filed an application to renew and amend the broadcasting licence for the French-language commercial radio station CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière, which expires on 31 December 2013.¹
2. As part of its application, the licensee proposed to delete conditions of licence 3 and 4 set out in Broadcasting Decision 2006-349:
 3. The licensee shall maintain a studio in Donnacona to ensure local coverage and a local presence.

¹The original expiry date of CHXX-FM's licence was 31 August 2012. The broadcasting licence was administratively renewed to 31 December 2013 as a result of Broadcasting Decisions 2012-434 and 2013-329.

4. During each broadcast week, the licensee shall broadcast no less than 14 hours of local programming produced at its Donnacona studio and targeting residents of the Portneuf area.
3. To justify this deletion, RNC noted CHXX-FM's negative financial situation, the fact that the station is an integral part of the Québec market, that the programming produced in the Donnacona studio has low listenership in that market and the absence of BBM tuning data for Portneuf to measure its local success. RNC indicated that it would be important to replace the local programming produced at its Donnacona studio targeting the Portneuf region with programming better tailored to the greater Québec market.

Background

4. The service offered by CHXX-FM was originally approved in Broadcasting Decision 95-9. As set out in that decision, the applicant intended to provide the first local radio service to Portneuf.
5. In Broadcasting Decision 2006-349, the Commission authorized the licensee of CHXX-FM to access the Québec advertising market by approving the following two requests:
 - deletion of the condition of licence specifying that the station must refrain from soliciting advertising outside of the Portneuf area; and
 - amendment to the station's technical parameters to significantly extend its coverage area to include Québec.
6. By approving these two requests, the Commission wanted to help the licensee rectify its station's financial problems caused by the competitive context particular to the Portneuf market. However, to ensure that the station continued to adequately serve its original Portneuf market, the Commission required, by condition of licence, that the licensee maintain a studio in Donnacona and broadcast a weekly minimum of 14 hours of local programming targeting residents of the Portneuf area. In the present application, RNC now wishes to delete these two conditions of licence.

Interventions

7. The Commission received an intervention from the Ministère de la Culture et des Communications and the Ministère de la Sécurité publique (the Ministères), on behalf of the government of Quebec. It also received two interventions from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ).
8. The intervention by the Ministères related to the station's participation in the National Public Alerting System (NPAS). In this regard, 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, the Commission expects all licensees to participate voluntarily in the NPAS so that Canadians receive timely warnings of imminent perils.

9. The interventions from the ADISQ concern RNC's non-compliance with respect to the level of French-language vocal music (FVM) broadcast on CHXX-FM and its required Canadian content development (CCD) contributions, as well as the impact that RNC's proposed licence amendment would have on its initial market and on the musical diversity in the Québec market.
10. In reply to the comments from the Ministères, RNC indicated that it was prepared to implement the NPAS in a number of its stations, including CHXX-FM. Regarding the interventions from the ADISQ, the licensee indicated that it had taken all the measures necessary to rectify its non-compliance. RNC also stated that the city of Donnacona is an integral part of Québec metropolitan area and that no interventions had been submitted opposing its proposed licence amendment.
11. The public record for this application can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decisions

12. After examining this application in light of the interventions and the applicable regulations and policies, the Commission considers that it must address the following issues with respect to CHXX-FM's licence amendment and renewal:
 - the reasons provided by RNC to justify its application;
 - the impact of deleting the two conditions of licence; and
 - the instances of non-compliance.

Reasons provided by RNC to justify its application

13. The Commission notes that the licensee mentioned primarily the financial difficulties of CHXX-FM to justify the deletion of its two conditions of licence. However, the Commission notes that the licensee did not demonstrate the potential impact of the deletion on its financial situation or on the Québec radio market. In addition, RNC did not present financial projections to support its request and did not submit any estimate of the anticipated additional revenue resulting from the elimination of local programming targeting the Portneuf market.

Impact of deleting the two conditions of licence

14. Although Portneuf listeners are served by several stations from the Québec market, the Commission notes that CHXX-FM is currently the only station to offer local programming specifically tailored to Portneuf listeners. As a result, the Commission

considers that RNC's proposed licence amendment would significantly reduce the local programming offered specifically for that community. The Commission reminds RNC that although the station has had access to the Québec advertising market since 2006, its initial market remains Portneuf. The Commission thus agrees with the ADISQ that the licence amendment would have a negative impact on the station's initial market.

15. Given that CHXX-FM Donnacona is currently the only station to provide truly local programming to Portneuf listeners and that RNC did not demonstrate how the approval of its request would have a direct significant impact on the financial situation of CHXX-FM, the Commission **denies** the licensee's request to delete conditions of licence 3 and 4 for this station regarding the local programming produced at the Donnacona studio and targeting the Portneuf market.

Instances of non-compliance

16. In Broadcasting Notice of Consultation 2013-218, the Commission stated that the licensee was in apparent non-compliance with its condition of licence relating to Canadian talent development (CTD) contributions for the 2006-2007 broadcast year. In Broadcasting Notice of Consultation 2013-218-1, the Commission added that RNC was also in apparent non-compliance with sections 2.2(5) and 2.2(10) of the *Radio Regulations, 1986* (the Regulations) concerning the broadcast of FVM in the broadcast week of 23 to 29 May 2010.
17. CHXX-FM's condition of licence relating to CTD² contributions required that RNC expend "no less than \$39,260 annually in direct expenditures to CTD over seven consecutive years, beginning in the first year of the new licence term." The Commission notes that in the 2006-2007 broadcast year, RNC omitted to pay the amount of \$39,260 to CTD. The licensee indicated that this non-payment was because it thought that the first year of contribution coincided with the implementation in 2008 of the technical amendments approved in Broadcasting Decision 2006-349. The licensee confirmed that it would henceforth ensure systematic monitoring relating to CCD³ contributions.
18. Although this is the first licence term in which CHXX-FM has been in non-compliance, the Commission notes that the outstanding contribution for the 2006-2007 broadcast year is very high and that the condition of licence to that effect is clear. However, the Commission notes that RNC has since paid the outstanding amount of \$39,260 and has submitted the necessary proof of payment.
19. The Commission expects the licensee to fully comply with its condition of licence set out in Broadcasting Decision 2006-349 according to which at least \$39,260 must be paid annually to CCD over seven consecutive years (i.e. until the end of the 2012-2013 broadcast year). Given that stations must file their annual returns by

² See condition of licence 5 set out in the appendix to Broadcasting Decision 2006-349.

³ In Broadcasting Public Notice 2006-158, the Commission replaced the expression "Canadian talent development" with the expression "Canadian content development."

30 November, the Commission asks the licensee to submit, in a form deemed acceptable⁴ by the Commission, proof of payment regarding the contribution of \$39,260 that was to be made in the 2012-2013 broadcast year within **30 days of the date of this decision**. A **condition of licence** to that effect is set out in the appendix to this decision.

20. With regard to CHXX-FM's non-compliance concerning the broadcast of FVM in the broadcast week of 23 to 29 May 2010, the Commission notes that the station's FVM level during the broadcast week examined was 60.8%, 4.2% below the regulatory requirement. In addition, the FVM level between 6 a.m. and 6 p.m. Monday through Friday of that same week was 50.3%, 4.7% below the regulatory requirement. This instance of non-compliance is explained by the fact that the Commission disqualified all montages broadcast by the station during the week examined because of interruptions between the musical selections. However, the Commission notes that had it not disqualified the montages, FVM levels would have been met. The licensee contended that it had taken the necessary measures to ensure that its montages henceforth complied with the Commission's requirements for the broadcast of radio montages.⁵

Regulatory measures

21. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach for dealing with 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, the arguments provided by the licensee and the measures taken to rectify the situation.
22. The Commission considers that initiatives relating to the development of Canadian content and talent 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.
23. The Commission considered the record for this application and is satisfied with the licensee's explanation and the actions it has taken to deal with the instances of non-compliance. However, the Commission finds that a short-term renewal for CHXX-FM is appropriate given the nature and seriousness of the non-compliance.

Conclusion

24. In light of all of the above, the Commission **renews** the broadcasting licence for the French-language commercial radio programming undertaking CHXX-FM

⁴ For more details about the proof of payment required by the Commission, see Broadcasting Information Bulletin 2011-795.

⁵ These requirements are set out in Broadcasting Information Bulletin 2011-728.

Donnacona, Quebec, and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière from 1 January 2014 to 31 August 2017. The terms and **conditions of licence** are set out in the appendix to this decision.

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

Employment equity

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

Secretary General

Related documents

- *CHXX-FM Donnacona – Administrative renewal*, Broadcasting Decision CRTC 2013-329, 10 July 2013
- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2013-218-1, 4 July 2013
- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2013-218, 7 May 2013
- *Administrative renewals*, Broadcasting Decision CRTC 2012-434, 8 August 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
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *CKNU-FM Donnacona and CKNU-FM-1 Sainte-Croix-de-Lotbinière – Licence renewal and amendment*, Broadcasting Decision CRTC 2006-349, 10 August 2006
- *New radio programming undertaking*, Decision CRTC 95-9, 13 January 1995

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

Appendix to Broadcasting Decision CRTC 2013-650

Terms and conditions of licence for the French-language commercial radio programming undertaking CHXX-FM Donnacona, Quebec, and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière

Terms

The licence will expire on 31 August 2017.

Conditions of licence

1. The licensee shall adhere 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, as amended from time to time.
2. As an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations), the licensee shall in each broadcast week devote:
 - a) at least 45% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety; and
 - b) between 6 a.m. and 6 p.m. in the period from Monday to Friday of the same broadcast week, at least 45% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

For the purposes of this condition of licence, “broadcast week,” “Canadian selection,” “musical selection” and “content category” shall have the same meanings as set out in the Regulations.

3. The licensee shall maintain a studio in Donnacona to ensure local coverage and a local presence.
4. In each broadcast week, the licensee shall broadcast at least 14 hours of local programming produced at its Donnacona studio and targeting residents of the Portneuf area.
5. By no later than **3 January 2014**, the licensee shall file, in a form deemed acceptable by the Commission, all proof of payment regarding the minimum annual contribution of \$39,260 relating to Canadian content development that should have been made in the broadcast year ending on 31 August 2013 to comply with condition of licence 5 set out in *CKNU-FM Donnacona and CKNU-FM-1 Sainte-Croix-de-Lotbinière – Licence renewal and amendment*, Broadcasting Decision CRTC 2006-349, 10 August 2006.