



## Broadcasting Decision CRTC 2013-721

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Route reference: 2013-315

Ottawa, 19 December 2013

**591989 B.C. Ltd.**  
Kingston, Ontario

*Applications 2013-0122-5 and 2013-0128-3, received 23 January 2013*

### **CFMK-FM and CKWS-FM Kingston – Licence renewals**

*The Commission renews the broadcasting licences for the English-language commercial radio stations CFMK-FM and CKWS-FM Kingston, Ontario, from 1 January 2014 to 31 August 2020.*

#### **Introduction**

1. 591989 B.C. Ltd. filed applications to renew the broadcasting licences for the English-language commercial radio stations CFMK-FM and CKWS-FM Kingston, Ontario, which expire 31 December 2013.<sup>1</sup> The Commission did not receive any interventions in connection with these applications.

#### **Non-compliance**

2. In Broadcasting Notice of Consultation 2013-315, the Commission noted that for both stations, the licensee was in apparent non-compliance with section 15 of the *Radio Regulations, 1986* (the Regulations) relating to Canadian content development (CCD) contributions, for the 2007-2008 broadcast year. Specifically, the licensee directed a portion of its required CCD contributions to the Pirate Entertainment Group (PEG) initiative, which is an eligible initiative under the Commission's Commercial Radio Policy (see Broadcasting Public Notice 2006-158) but contains an element that is ineligible under that policy.
3. The licensee stated that it believed that the PEG initiative, a spoken word initiative funded during the 2007-2008 broadcast year, was an eligible initiative under the Commercial Radio Policy given that it met one of the fundamental criteria of that policy, specifically, that it was an independent party dedicated to producing new spoken word content that would otherwise not be produced for broadcast. Further, it argued that the costs covered by its contribution were incremental to regular operational and programming costs. Finally, the licensee stated that although the

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<sup>1</sup> The original expiry date of these broadcasting licences was 31 August 2013. The licences were administratively renewed until 31 December 2013 in Broadcasting Decision 2013-418.

programs proved to be unsuitable for broadcast on radio, the funds were nevertheless invested in the production of spoken word audio content.

4. The licensee added that to ensure future compliance with CCD requirements, it has charged a senior manager with ensuring that all radio station staff is aware of these requirements and with coordinating an internal overview of all of the stations' CCD initiatives at a corporate level. The licensee also indicated that it routinely consults with Commission staff regarding CCD requirements.
5. The Commission notes that while the PEG initiative is an eligible CCD initiative, it provides for audience focus testing. This element of the PEG initiative does not relate to audio content for broadcast, but instead consists of an opinion survey to test audience reactions to programming and advertising. In previous decisions, the Commission has ruled that expenditures relating to opinion surveys constitute regular programming costs and, as such, are ineligible as CCD contributions. As a result, expenditures on this element of the PEG initiative are ineligible as CCD contributions.
6. The Commission further notes that a number of radio stations owned and operated by Corus Entertainment Inc. have contributed to the PEG initiative. In the context of past licence renewals, the licensee explained that it has previously claimed such expenditures and was not informed that these expenditures were not eligible CCD contributions. In the Commission's view, the licensee therefore had reason to believe that its contribution to the PEG initiative, including to the ineligible element of that initiative, was made in good faith.
7. Although the Commission considers that the licensee is in non-compliance with its CCD contributions regarding the PEG initiative, it will not require the licensee to redirect the shortfall to another CCD initiative given the particular circumstances surrounding the non-compliance.
8. In light of the above, the Commission finds the licensee in non-compliance with section 15 of the Regulations for the 2007-2008 broadcast year for both of its stations, CFMK-FM and CKWS-FM Kingston.

### **Regulatory measures**

9. 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.
10. 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 also 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. The Commission notes that licensees are responsible for ensuring that their CCD contributions are made to eligible initiatives, as described in paragraph 108 of Broadcasting Public Notice 2006-158.

11. The Commission has reviewed the record for this application and considers that the licensee made its CCD contributions in good faith and that the licensee has taken the necessary measures to ensure future compliance with section 15 of the Regulations relating to CCD contributions, since there were no non-compliance issues in subsequent years. Given the circumstances surrounding the licensee's non-compliance for CFMK-FM and CKWS-FM, the Commission considers it appropriate to grant a full-term renewal to these stations.

## **Conclusion**

12. In light of all the above, the Commission **renews** the broadcasting licences for the English-language commercial radio programming undertakings CFMK-FM and CKWS-FM Kingston, Ontario, from 1 January 2014 to 31 August 2020. The licensee shall adhere to the **conditions of licence** set out in Broadcasting Regulatory Policy 2009-62, as amended from time to time.

## **Reminder**

13. Pursuant to section 22 of the *Broadcasting Act*, the Commission reminds the licensee that the broadcasting licences will cease to have any force or effect if the broadcasting certificates issued by the Department of Industry lapse.

## **Employment equity**

14. 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**

- *Various radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2013-418, 19 August 2013
- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2013-315, 2 July 2013
- *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
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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