



## Broadcasting Decision CRTC 2014-168

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Route reference: 2013-448

Ottawa, 8 April 2014

**RNC MEDIA Inc.**  
Montréal, Quebec

*Application 2013-0237-2, received 31 January 2013*  
*Public hearing in the National Capital Region*  
*5 November 2013*

### **CKLX-FM Montréal – Licence renewal and amendment**

*The Commission **renews** the broadcasting licence for the French-language commercial specialty radio station CKLX-FM Montréal, Quebec, from 1 September 2014 to 31 August 2017. This short-term renewal will allow for an earlier review of the licensee's compliance with its regulatory requirements and the Radio Regulations, 1986.*

*In addition, the Commission **approves** the licensee's request that CKLX-FM move from its current specialty music format, focused on jazz and blues, to a spoken word format. The Commission considers that this format change will help maintain the diversity of voices in the Montréal radio market and offer another perspective on current events.*

#### **The application**

1. RNC MEDIA Inc. (RNC) filed an application to renew the broadcasting licence for the French-language commercial specialty radio station CKLX-FM Montréal, Quebec, which expires 31 August 2014.<sup>1</sup>
2. The licensee also proposed that CKLX-FM move from its current specialty music format, focused on jazz and blues, to a spoken word format. To do this, RNC proposed to delete conditions of licence 3, 4 and 5 set out in Broadcasting Decision 2010-585, according to which the licensee must devote:
  - at least 70% of the station's musical programming to musical selections from content subcategory 34 (Jazz and blues).
  - at least 45% of all category 2 (Popular Music) musical selections aired during the broadcast week to Canadian selections broadcast in their entirety.

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<sup>1</sup> The original expiry date for CKLX-FM's broadcasting licence was 31 August 2013. The licence was administratively renewed until 31 January 2014 in Broadcasting Decision 2013-346.

- at least of 35% of all category 3 (Special Interest Music) musical selections aired during the broadcast week to Canadian selections, to be scheduled in a reasonable manner throughout the broadcast day.
3. RNC proposed to replace these conditions of licence with the following condition:
    - The licensee shall devote a minimum of 50% of the programming broadcast during each broadcast week to programs drawn from category 1 (Spoken word).
  4. In support of its application, RNC indicated that CKLX-FM has experienced significant financial losses since its launch in 2004 and that its current music format is not viable in the Montréal radio market. According to RNC, the proposed format change is necessary to ensure the station's survival.

## **Background**

5. In Broadcasting Notice of Consultation 2013-448, the Commission announced that RNC's application would be considered at the appearing phase of the 5 November 2013 public hearing.
6. The Commission had renewed, in Broadcasting Decision 2010-585, the broadcasting licence for CKLX-FM for a short-term period of three years since the licensee had failed to comply with its condition of licence relating to Canadian content development (CCD) contributions for the 2004-2005 to 2008-2009 broadcast years.
7. In 2011, RNC filed an application for the same format change as that proposed in this application. In Broadcasting Decision 2013-123, the Commission noted that the licensee had demonstrated a compelling economic need justifying the proposed format change. However, the Commission determined that this change could greatly limit TTP Media's ability to generate the projected revenues for its future French-language station with a spoken word format and to reach its financial and market share objectives. Moreover, the Commission found that RNC was in non-compliance with its regulatory requirements regarding programming. In light of the Montréal radio market's conditions and the licensee's instances of non-compliance, the Commission therefore denied RNC's application. The instances of non-compliance identified in Broadcasting Decision 2013-123 are examined in this decision.

## **Interventions and replies**

8. The Commission received joint supporting interventions, as well as an intervention commenting on the application from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), to which RNC replied during the public hearing. It also received opposing interventions from the Coalition Sortons les radios-poubelles de Québec (the Coalition), the Front commun des personnes assistées sociales du Québec (FCPASQ) and two individuals, to which RNC also

replied. The public record for this proceeding can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the application number provided above.

#### **ADISQ**

9. At the public hearing, ADISQ first expressed concern over the licensee's instances of non-compliance regarding its programming, as well as the fact that RNC, one of the biggest players in the Quebec radio market, is pleading ignorance with respect to music categories and French-language vocal music (FVM). In light of the licensee's instances of non-compliance, ADISQ is of the view that the licence for CKLX-FM should be renewed for a short-term period.
10. ADISQ also submitted that a radio station with a specialty music format does not necessarily generate the same profit as a commercial radio station, given that its audience is more limited. In response to RNC's argument that all jazz stations in Canada have given up their jazz programming, ADISQ emphasized that these stations maintained their music format and continued to devote part of their programming to jazz. ADISQ put forth that CKLX-FM should maintain its music format and that it would not affect existing stations. However, ADISQ agreed that greater music programming flexibility should be granted to CKLX-FM.
11. ADISQ was also concerned about the impact that a format change for CKLX-FM would have on TTP Media, an AM spoken word radio station that has yet to launch in Montréal.

#### **RNC reply**

12. In its reply to ADISQ, RNC stated that it had taken measures to rectify the non-compliances identified by the Commission in Broadcasting Decision 2013-123.
13. RNC also indicated that CKLX-FM, with its new spoken word format, would target people between the ages of 25 and 49, while the TTP Media station would target people 55 and over.

#### **Opposing interveners**

14. In a general manner, the Coalition, the FCPASQ and the individuals opposed RNC's format change application because, according to them, CKLX-FM broadcasts sexist, racist and hateful sentiments against homeless people and those receiving social assistance, among others. The two individuals were of the view that approval of this application would enable the station to broadcast more discriminatory statements.
15. The Coalition added that RNC is not complying with its current conditions of licence, the *Broadcasting Act*, the *Radio Regulations, 1986* (the Regulations) and the Charter of Human Rights and Freedoms.

## **RNC reply**

16. In response to the Coalition, which quoted excerpts from programs that included discriminatory statements, RNC explained that it could not verify the content because the logger tapes for those programs no longer exist. In addition, RNC indicated that several of the statements that the Coalition objected to were not made on CKLX-FM's airwaves. However, the licensee acknowledged that a CKLX-FM host had made hateful statements against homeless people and emphasized that the station's management had disciplined the host following the broadcast of the program. Further, RNC stated that it had recently hired a vice-president with experience in programming and information, who will be responsible for providing guidance on and improving spoken word programming.

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

17. After examining the public record for this proceeding in light of the interventions, as well as applicable policies and regulations, the Commission considers that the issues it must address are the following:

- programming diversity in the Montréal market;
- economic need justifying the proposed amendment;
- impact of the proposed amendment on existing stations and on the TTP Media station not yet in operation; and
- RNC's non-compliance with its regulatory requirements.

## **Programming diversity**

18. CKLX-FM is operated under a specialty format and is required to devote at least 70% of the station's music programming to content subcategory 34 (Jazz and blues). At this time, it is the only French-language specialty service that provides a jazz-centered music format in the Montréal market.

19. In this application, the licensee proposed to operate CKLX-FM in a spoken word format like that of CHOI-FM Québec, another RNC station known as "Radio X." The Commission notes that there are currently two French-language stations with a spoken word format in Montréal, namely, a commercial radio station (CHMP-FM) and the Canadian Broadcasting Corporation's (CBC) station La Première Chaîne. The Commission notes that the formats of these two stations do not target the same population as that proposed by RNC.

20. In light of the above, the Commission finds that the CKLX-FM format change would help maintain the diversity of voices in the Montréal radio market and offer another perspective on current events.

## **Economic need**

21. The Commission notes that CKLX-FM has been operating at a loss since its launch in 2004. In addition, according to the financial projections provided by RNC, the total loss for the station would be close to 12 million dollars over the next seven years as a result of a denial of the application. Moreover, RNC reiterated that it would consider shutting down CKLX-FM if the application were denied. RNC indicated that approval of this application would enable CKLX-FM to generate significantly higher total revenues than those it has generated to date and would enable it to become profitable by the fourth year of the renewed licence term.
22. The Commission notes RNC's argument that CKLX-FM's current music format significantly limits its capacity to improve its financial situation. It recognizes that a format change could be financially beneficial in that a spoken word format could attract more listeners and generate additional advertising revenues. According to RNC, CKLX-FM could also benefit from synergies with other RNC "Radio X" stations.
23. The Commission further notes that in Broadcasting Decision 2013-123, it already determined that the licensee had demonstrated a compelling economic need justifying the proposed amendment. Examination of this application has enabled the Commission to determine that CKLX-FM's financial situation is not improving. Consequently, the Commission considers that RNC has again demonstrated an economic need justifying the proposed format change.

## **Impact on existing stations and the TTP Media station**

24. The French-language Montréal radio market comprises ten commercial radio stations and two CBC stations. The Commission is of the view that Bell and Cogeco are the two dominant players in this market, given that they control six of the ten commercial radio stations and that most of their stations hold the largest market shares.
25. In the event that CKLX-FM were operated under a spoken word format, it is possible that CHMP-FM Montréal, a French-language spoken word station, could lose a portion of its audience shares and revenue to the benefit of CKLX-FM. However, in light of CHMP-FM's good financial situation and significant popularity with audiences, the Commission finds that the impact of this application's approval on the station would be limited. Incidentally, the licensee of CHMP-FM did not intervene in this application.
26. With respect to TTP Media,<sup>2</sup> the Commission had determined in Broadcasting Decision 2013-123 that approval of RNC's application would represent a significant additional challenge to TTP Media since this station, while authorized by the Commission in 2011, remained unlaunched. More specifically, the Commission indicated that approval of the application could change the market's conditions in a way that could harm TTP Media's authorized station.

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<sup>2</sup>The TTP Media station was initially approved in Broadcasting Decision 2011-721.

27. The Commission notes that it granted TTP Media an additional extension until November 2014 to launch its station given that it did not do so in the two years following authorization of the station. In that regard, the Commission's standard practice is to not consider applications for new stations intended to serve the market in question within two years of the publication of its decision to approve a new station when it was licensed following a call for applications. Given that the two-year period has expired, the concerns raised in Broadcasting Decision 2013-123 have not been considered in this application. Further, the Commission notes that TTP Media did not intervene in this application.

#### **Non-compliance**

28. In Broadcasting Decision 2013-123, after having examined all of CKLX-FM's programming for the week of 19 to 25 August, the Commission determined that RNC was in non-compliance for the following reasons:

- in the initial filing,<sup>3</sup> RNC did not identify FVM or content category 3 selections, as required under section 9(3)(b) of the Regulations;
- in the initial filing, the files submitted by RNC for 22 August 2012 were illegible, whereas sections 8(5) and 8(6) of the Regulations require that licensees keep clear and intelligible recordings of all matter broadcast;
- the quantity of FVM selections from content category 2 was 46.6%, while the level required by section 2.2(5) of the Regulations is 65%;
- the level of content category 3 (which includes subcategory 34) musical selections broadcast was 58.4% rather than the 70% required by its condition of licence.

29. In the context of this renewal application, the Commission examined CKLX-FM's programming for the period from 11 to 17 August 2013. The examination demonstrated that RNC had rectified the instances of non-compliance associated with programming as set out in Broadcasting Decision 2013-123. However, the Commission notes that RNC did not submit a program register, as requested by the Commission, thereby representing an instance of apparent non-compliance with section 8(4) of the Regulations, and that the licensee was informed of the situation in a letter dated 30 September 2013. In a letter dated 30 October 2013, the licensee indicated that it had resolved the previous instances of non-compliance. Moreover, it indicated that the present non-compliance consists of an error of interpretation committed by a member of the station's staff and that it has ensured that this person fully understand what needs to be filed.

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<sup>3</sup> RNC filed complete documentation regarding its programming for the week in question only after two Commission requests.

## Regulatory measures

30. 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.
31. In addition, the Commission stated that in the case of applications for licence amendments, it would take into account these same factors as well as the relationship between the application for the amendment and any instance of non-compliance.
32. The Commission considers that the present instance of non-compliance identified in the context of this application is neither serious nor recurring. However, it is of the view that the instances of non-compliance relating to programming, as indicated in Broadcasting Decision 2013-123, are very serious. Further, even though RNC has adhered to its CCD requirements during its current licence term, this is the second consecutive licence term in which RNC did not abide by some of its key regulatory requirements.
33. In light of the seriousness of the instances of non-compliance set out in Broadcasting Decision 2013-123, the non-compliance with section 8(4) of the Regulations regarding the submission of program registers requested during this proceeding and the fact that this is the second consecutive licence term in which RNC is in non-compliance, the Commission finds that a short-term renewal for CKLX-FM Montréal is appropriate.

## Conclusion

34. In light of the above, the Commission **renews** the broadcasting licence for the French-language commercial specialty radio programming undertaking CKLX-FM Montréal, Quebec, from 1 September 2014 to 31 August 2017. The terms and **conditions of licence** are set out in the appendix to this decision.
35. Given that CKLX-FM's format change would allow an increase the diversity of the spoken word offering in the Montréal radio market, that an economic need for this change has been demonstrated and that the impact on other stations in the market would be limited, the Commission **approves** the request by RNC that CKLX-FM move from its current specialty music format, focused on jazz and blues, to a spoken word format. A **condition of licence** to that effect is set out in the appendix to this decision.
36. The Commission emphasizes the importance it places on a licensee's fulfillment of 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 and the Regulations.

## **Employment equity**

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

Secretary General

### **Related documents**

- *CKLX-FM Montréal – Administrative renewal*, Broadcasting Decision CRTC 2013-346, 22 July 2013
- *CKLX-FM Montréal – Licence amendments*, Broadcasting Decision CRTC 2013-123, 14 March 2013
- *AM radio stations in Montréal*, Broadcasting Decision CRTC 2011-721, 21 November 2011
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *CKLX-FM Montréal – Licence renewal and amendment*, Broadcasting Decision CRTC 2010-585, 17 August 2010

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

## **Appendix to Broadcasting Decision CRTC 2014-168**

### **Terms and conditions of licence for the French-language commercial specialty radio programming undertaking CKLX-FM Montréal, Quebec**

#### **Terms**

The licence will expire 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, with the exception of condition 7.
2. The station shall be operated within the Specialty format as defined in *A Review of certain matters concerning radio*, Public Notice CRTC 1995-60, 21 April 1995, as amended from time to time, and *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010, as amended from time to time.
3. The licensee shall devote at least 50% of the programming broadcast each broadcast week to programs drawn from content category 1 (Spoken Word).