



Broadcasting Decision CRTC 2014-25

PDF version

Route reference: 2013-506

Ottawa, 29 January 2014

Faithway Communications Inc.
Fredericton, New Brunswick

Application 2012-0505-5, received 20 April 2012
Application 2013-0500-6, received 24 March 2013

CJRI-FM Fredericton and its transmitters CJRI-FM-1 Woodstock, CJRI-FM-2 St. Stephen and CJRI-FM-3 New Bandon – Licence renewal and technical changes

*The Commission **renews** the broadcasting licence for the English-language commercial specialty radio station CJRI-FM Fredericton and its transmitters CJRI-FM-1 Woodstock, CJRI-FM-2 St. Stephen and CJRI-FM-3 New Bandon, New Brunswick, from 1 February 2014 to 31 August 2015. This short-term licence renewal will allow for an earlier review of the licensee's compliance with its conditions of licence and with the Radio Regulations, 1986.*

*The Commission **denies** an application by the licensee to amend the broadcasting licence for CJRI-FM in order to change the station's frequency, and to increase its effective radiated power.*

Introduction

1. Faithway Communications Inc. (Faithway) filed an application (2012-0505-5) to renew the broadcasting licence for the English-language commercial specialty radio station CJRI-FM Fredericton and its transmitters CJRI-FM-1 Woodstock, CJRI-FM-2 St. Stephen and CJRI-FM-3 New Bandon, which expires 31 January 2014.¹
2. Faithway also filed an application (2013-0500-6) to amend the broadcasting licence for CJRI-FM in order to change its frequency from 104.5 MHz (channel 283LP) to 95.1 MHz (channel 236A), and to increase the effective radiated power (ERP) from 50 to 1,500 watts (non-directional antenna). The Commission notes that the proposed technical parameters would change the operating class of CJRI-FM from that of an unprotected low-power station to that of a protected Class A station. The licensee

¹ The original licence expiry date for CJRI-FM was 31 August 2011. The licence was administratively renewed until 31 January 2014 as a result of Broadcasting Decisions 2011-555, 2012-434, 2013-418 and 2013-740.

stated that the changes are necessary to compensate for geographical factors within the present contours that negatively affect its signal.

3. The Commission did not receive any interventions in connection with these applications.

Non-Compliance

4. In Broadcasting Notice of Consultation 2013-506, the Commission stated that the licensee was in apparent non-compliance with the following:
 - section 9(2) of the *Radio Regulations, 1986* (the Regulations), which relates to the filing of annual returns, for the 2004-2005 and 2006-2007 through 2011-2012 broadcast years;
 - section 9(4) of the Regulations, which relates to the licensee's obligation to respond to a Commission inquiry;
 - section 11(4) of the Regulations, which relates to obtaining prior Commission approval for a change to the effective control of an undertaking;
 - the station's condition of licence relating to contributions to Canadian talent development (CTD) (and Canadian content development, or CCD), for the 2004-2005 through 2010-2011 broadcast years; and
 - section 15(2) of the Regulations, which relates to contributions to CCD, for the 2008-2009 through 2011-2012 broadcast years.

Commission's analysis and decisions

5. After examining the applications in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
 - the licensee's apparent non-compliance with various regulatory and licence requirements; and
 - the licensee's requested technical changes for the station.

Non-compliance

6. As noted above, the licensee is in apparent non-compliance with requirements relating to the filing of annual returns, responding to Commission inquiries, obtaining prior Commission approval for changes in the effective control of its undertaking, and required contributions to CTD and CCD.

Annual returns

7. As set out in section 9(2) of the Regulations, “On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous August 31.” In regard to CJRI-FM, Faithway filed the annual returns for the 2008-2009 through 2011-2012 broadcast years after the 30 November deadline.
8. Furthermore, for the 2004-2005 and 2006-2007 through 2011-2012 broadcast years, the station’s annual returns were incomplete, either missing financial statements or including financial statements that did not match the broadcast year. The Commission notes that the missing financial statements for 2007-2008 and 2010-2011 were filed with the Commission on 22 January 2013, but that the missing financial statements for 2004-2005 have yet to be filed. Further, the annual return for 2011-2012 was filed with the Commission in June 2013, six months after the prescribed deadline, and the financial statements have not yet been filed.
9. To explain the apparent non-compliance, Faithway stated that the accountants who worked on those returns, who no longer work for the licensee, most likely chose to ignore the Commission’s instruction. The licensee also stated that it has since hired a new accountant, to whom all of the financial documents have been transferred. It noted that the new accountant must still become acquainted with the unique requirements of broadcasting, but will assume full responsibility for the station’s compliance during the new licence term.
10. In light of the above, the Commission finds the licensee in non-compliance with section 9(2) of the Regulations. In regard to the missing financial statements for the 2004-2005 and 2011-2012 broadcast years, the Commission requires Faithway to submit financial statements for those broadcast years by no later than **29 April 2014**. A **condition of licence** to that effect is set out in the appendix to this decision.

Commission request for information

11. As set out in section 9(4)(a) of the Regulations, “At the request of the Commission, a licensee shall respond to any complaint or request for resolution of a dispute filed by any person or any request for information regarding programming originated or distributed by the licensee or regarding the licensee’s technical operations, subscribership, financial affairs or ownership.”
12. In regard to this requirement, Faithway failed to provide a timely response to a Commission inquiry relating to the licensee’s ownership structure. The Commission originally requested information on 6 December 2012. After numerous discussions with the licensee and repeated requests for the required ownership documents, the Commission received the ownership information and documentation on 23 April 2013.
13. In light of the above, the Commission finds the licensee in non-compliance with section 9(4)(a) of the Regulations.

Change in effective control

14. Section 11(4) of the Regulations sets out various situations in which prior Commission approval is required for changes in the effective control of an undertaking.
15. In Broadcasting Decision 2004-523, the Commission approved an application by Faithway for a broadcasting licence to operate a new specialty (Christian music) commercial FM radio station, which would be owned and operated by a not-for-profit organization to be incorporated as “Faithway Communications Inc.” and would be controlled by its board of directors. However, upon receipt of ownership information and requested documentation from CJRI-FM, Commission staff confirmed that on 5 January 2005, a for-profit corporation owned by Mr. Ross Ingram (51% voting interest) and Mr. Paul Dixon (49% voting interest) had been incorporated under the name of “Faithway Communications Inc.” As a result of this incorporation, the effective control of the radio station approved in Broadcasting Decision 2004-523 changed, from the board of directors of the organization to be incorporated to Mr. Ingram, the majority shareholder of Faithway. The Commission notes that this transaction was completed without its prior approval.
16. The licensee stated that it was under the impression that “Faithway Communications Inc.” was incorporated as a not-for-profit corporation, and that it was only made aware of its for-profit status when informed by the Commission. The licensee further stated that CJRI-FM has been run on a not-for-profit basis, with neither of the two principals, nor any of the volunteers receiving compensation of any kind, and with the modest revenues from advertising being used to cover the costs of the operation.
17. In light of the above, the Commission finds the licensee in non-compliance with section 11(4) of the Regulations. The Commission notes that it received an application by Faithway on 10 May 2013 to change the effective control of the station, and that this application was administratively approved on 28 May 2013 (see Broadcasting Information Bulletin 2013-482).

Contributions to Canadian talent development and Canadian content development

18. As set out in Broadcasting Decision 2004-523, Faithway is required to make an annual contribution of \$400 to CTD (now known as CCD, as of the 2008-2009 broadcast year) for CJRI-FM. The Commission notes that the licensee did not make the required payment for each of the 2004-2005 through 2010-2011 broadcast years, resulting in a shortfall of \$2,800 over the licence term. However, the Commission further notes that a contribution in the full amount of the shortfall has since been made to FACTOR.
19. As noted above, upon receipt of the above-noted ownership documentation on 23 April 2013, Faithway was identified as being a for-profit corporation since January 2005. It was therefore required for the 2008-2009 through 2010-2011 broadcast years, pursuant to the section of the regulations governing radio station licensees at the time

(which has since been replaced by section 15(2) of the Regulations), to contribute an annual amount to CTD/CCD based on its station's total revenues of the previous broadcast year. The Commission notes, however, that Faithway did not make the required CCD payments for CJRI-FM for 2008-2009 through 2010-2011. In light of this, the licensee has incurred an additional CCD shortfall of \$300 (i.e., \$100 for each of the 2008-2009, 2009-2010, and 2010-2011 broadcast years). Furthermore, the licensee did not make its required CCD contribution for the 2011-2012 broadcast year, resulting in a shortfall of \$500 for that broadcast year. In regard to the \$300 shortfall, the Commission notes that the licensee made an additional contribution in this amount to FACTOR on 28 May 2013.

20. The licensee stated that a lack of information as well as confusion with the Society of Composers, Authors and Music Publishers of Canada (SOCAN) led to the CTD/CCD shortfalls and the non-compliance. It explained that it was advised by another local broadcaster that fostering, promoting and airing local talent, and making contributions totaling approximately \$25,000 annually to SOCAN counted towards CTD contribution requirements.
21. The licensee also stated that it has since paid the shortfall for 2011-2012. However, it appears that the licensee has confused the above-noted \$300 shortfall with the \$500 shortfall for 2011-2012, which remains outstanding.
22. The Commission notes that Faithway has since established an annual planning calendar to remind it of deadlines, and that the licensee therefore does not anticipate any further problems. In addition, the licensee noted that as a result of the licence renewal experience, it is now fully cognizant of the Regulations and will comply fully with all requirements and deadlines. Nevertheless, the Commission finds the licensee in non-compliance with section 15(2) of the Regulations and with its condition of licence relating to CTD/CCD contributions.
23. In regard to the above-noted CCD shortfall for the 2011-2012 broadcast year, the Commission requires Faithway, by no later than **29 April 2014**, to make a payment of \$500 to an eligible CCD initiative and provide the Commission with proof that this payment has been made. A **condition of licence** to that effect is set out in the appendix to this decision.

Regulatory measures

24. 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.

25. 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 to the development of Canadian content and talent.
26. Furthermore, compliance with the 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 licence requirements. Accordingly, it considers annual returns that are incomplete and/or filed late to be a serious matter.
27. In regard to the nature of the licensee's various instances of non-compliance, the Commission considers that they relate to fundamental aspects of its regulatory system and of Faithway's broadcasting licence. Since the Commission is charged with the supervision and regulation of the Canadian broadcasting system, it must at all times be able to obtain information from licensees to adequately perform its duties. A licensee's filing of complete annual returns, filing of appropriate proof of payment to CTD/CCD initiatives, and responding to Commission inquiries are fundamental to the Commission's ability to monitor a radio station's performance and verify its compliance with the Regulations and with individual conditions of licence. Furthermore, when a licensee does not file requested material in a timely manner, or when it does not file such material at all, this affects the ability of the Commission to independently confirm the licensee's adherence to its regulatory and licence requirements. These filings also become important indicators of whether the licensee has the willingness, ability and knowledge necessary to bring itself into compliance and maintain such compliance.
28. The Commission acknowledges the explanations provided by the licensee, and notes the measures it has put in place to address the various instances of non-compliance and to ensure compliance going forward. However, given the nature and extent of the non-compliance, the Commission considers that a short-term licence renewal for CJRI-FM and its transmitters is appropriate.

Technical changes

29. As noted above, Faithway also filed an application to change CJRI-FM's frequency from 104.5 MHz (channel 283LP) to 95.1 MHz (channel 236A), and to increase its ERP from 50 to 1,500 watts (non-directional antenna). The licensee indicated that the requested changes are required to compensate for geographical factors within its present contours that negatively affect the received signal strength and thus the quality of radio service. It also argued that the changes would improve signal penetration in steel-framed buildings in areas of Fredericton. Faithway provided a number of letters supporting the application and setting out complaints in regard to the station's present situation.
30. The Commission notes, however, that most of the letters of support were submitted from people living outside of CJRI-FM's current primary service contour, and that

most of these listeners would still not be served by the proposed primary service contour. Furthermore, although an increase in transmitter power can generally address signal reception issues, the Commission considers that it did not receive compelling evidence of signal reception issues within the current primary service contour.

31. In Broadcasting Information Bulletin 2011-347, the Commission stated that when considering applications for licence amendments, it would no longer automatically deny the requested amendment when a licensee is in non-compliance, but would take into account the quantity, the recurrence and the seriousness of the non-compliance, as well as the relationship between the application for the amendment and any instance of non-compliance.
32. The Commission considers that the instances of non-compliance noted above, when taken cumulatively, are extremely serious due both to their nature and their recurrence during CJRI-FM's licence term. Moreover, given the lack of compelling evidence regarding signal reception issues within the licensee's current primary service contour, the Commission does not consider it appropriate to approve the requested technical changes. Consequently, the Commission **denies** Faithway's proposed technical changes for CJRI-FM.

Conclusion

33. In light of the above, the Commission **renews** the broadcasting licence for the English-language commercial specialty radio programming undertaking CJRI-FM Fredericton and its transmitters CJRI-FM-1 Woodstock, CJRI-FM-2 St. Stephen and CJRI-FM-3 New Bandon, New Brunswick, from 1 February 2014 to 31 August 2015. This short-term licence renewal will allow for an earlier review of the licensee's compliance with its conditions of licence and with the Regulations. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminders

34. Pursuant to section 22 of the *Broadcasting Act*, the Commission reminds the licensee that the broadcasting licence will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry lapses.
35. The Commission also reminds the licensee of the requirement set out in section 9(4)(a) of the Regulations relating to responding to Commission requests for information, and of the importance of responding to such requests in a timely manner.
36. Finally, the Commission reminds the licensee that it is required to seek prior Commission approval for any future act, agreement or transaction that would directly or indirectly result in a change in the ownership or effective control of CJRI-FM and its transmitters.

Secretary General

Related documents

- *CJRI-FM Fredericton and its transmitters CJRI-FM-1 Woodstock, CJRI-FM-2 St. Stephen and CJRI-FM-3 New Bandon – Administrative renewal*, Broadcasting Decision CRTC 2013-740, 20 December 2013
- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2013-506, 20 September 2013
- *Applications processed pursuant to streamlined procedures*, Broadcasting Information Bulletin CRTC 2013-482, 12 September 2013
- *Various radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2013-418, 19 August 2013
- *Administrative renewals*, Broadcasting Decision CRTC 2012-434, 8 August 2012
- *Administrative renewals*, Broadcasting Decision CRTC 2011-555, 31 August 2011
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Christian music FM radio station in Fredericton*, Broadcasting Decision CRTC 2004-523, 26 November 2004

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

Appendix to Broadcasting Decision CRTC 2014-25

Terms, conditions of licence and encouragement for the English-language commercial specialty radio programming undertaking CJRI-FM Fredericton and its transmitters CJRI-FM-1 Woodstock, CJRI-FM-2 St. Stephen and CJRI-FM-3 New Bandon, New Brunswick

Terms

The licence will expire 31 August 2015.

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 of licence 7.
2. The licensee shall operate the station within the specialty format as defined in *A review of certain matters concerning radio*, Public Notice CRTC 1995-60, 21 April 1995, 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 a minimum of 96% of all musical selections broadcast during each broadcast week to selections drawn from content subcategory 35 (Non-classic religious), as defined in *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010, as amended from time to time.

For the purposes of this condition, the terms “broadcast week” and “musical selection” shall have the same meaning as those set out in the *Radio Regulations, 1986*.

4. During each broadcast week, the licensee shall broadcast, at a minimum, one hour of balance programs.
5. The licensee shall adhere to the guidelines on ethics in religious programming as set out in section IV of *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993, as amended from time to time.
6. The licensee shall submit to the Commission the financial statements for CJRI-FM Fredericton and its transmitters for the 2004-2005 and 2011-2012 broadcast years by no later than **29 April 2014**.
7. In order to address its Canadian content development (CCD) contribution shortfall for the 2011-2012 broadcast year, the licensee shall, by no later than

29 April 2014, make a payment of \$500 to an eligible CCD initiative and provide the Commission with proof that this payment has been made.

Encouragement

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