



Broadcasting Decision CRTC 2015-391

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References: 2015-199 and Part 1 application posted on 4 September 2014

Ottawa, 21 August 2015

Harvard Broadcasting Inc.
Edmonton, Alberta

Applications: 2014-0841-9 and 2014-0846-9

CKEA-FM Edmonton – Licence renewal and amendment

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CKEA-FM Edmonton from 1 September 2015 to 31 August 2022.*

The Commission requires the licensee to make an additional contribution of \$3,750 to Canadian content development for the 2015-2016 broadcast year. This is a remedial measure for harm to the Canadian broadcasting system resulting from non-compliance with its condition of licence regarding the broadcast of special interest musical selections.

*In light of the non-compliance, the Commission **denies** the application for CKEA-FM to be relieved of requirements regarding the broadcast of special interest music.*

Applications

1. Harvard Broadcasting Inc. (Harvard) filed an application (2014-0841-9) to renew the broadcasting licence for the English-language commercial radio station CKEA-FM Edmonton, Alberta, which expires 31 August 2015.
2. Harvard also filed an application (2014-0846-9) to be relieved from some of the requirements set out in its conditions of licence. Specifically, it requested that it no longer be required to devote at least:
 - 15% of all musical selections broadcast each week to music drawn from content category 3 (Special Interest Music).
 - 20% of its musical selections from content subcategory 34 (Jazz and blues) to Canadian selections broadcast in their entirety.
3. Harvard considered that the amendment was necessary to ensure that CKEA-FM was financially viable. It submitted that CKEA-FM was unable to operate profitably without an increase in audience share and that there was a lack of demand for the station's original adult album alternative format. Removal of the condition of licence

would allow the station to focus entirely on classic hits and thereby compete more effectively in the Edmonton market.

Intervention

4. The Commission received an intervention opposing the licence amendment from Newcap Inc. (Newcap). The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca or by using the appropriate application number provided above.
5. Newcap submitted that Harvard was granted a licence for CKEA-FM after a competitive process based on the diversity of the format that it proposed. Approval of the application would allow CKEA-FM to operate with a music format similar to that of Newcap's Edmonton stations CIRK-FM and CKRA-FM. Furthermore, Newcap was of the view that the Commission should deny the application because CKEA-FM was in non-compliance with one of its conditions of licence that it is applying to delete.

Applicant's reply

6. In reply to Newcap, Harvard submitted that it is common for stations operating in competitive markets to share similar formats. It was also of the view that there was no public benefit to maintaining conditions of licence requiring that CKEA-FM broadcast category 3 music. Harvard also cited decisions where the Commission had approved applications for licence amendment.

Non-compliance

7. In Broadcasting Notice of Consultation 2015-199, the Commission stated that the licensee appeared to have failed to comply with its condition of licence concerning the broadcast of category 3 music by devoting only 10.36% of its musical selections to such music during the broadcast week of 25 to 31 May 2014 as opposed to the 15% that it is required to broadcast. The Commission's analysis found that Harvard had incorrectly identified several selections as falling into content category 3. Harvard did not contest this analysis. It indicated that it now has a clear understanding of what musical selections qualify as category 3 selections and has revised its playlists accordingly.
8. In light of the preceding, the Commission finds the licensee in non-compliance with its condition of licence concerning the broadcast of category 3 music for the broadcast week of 25 to 31 May 2014.

Licence amendment

9. The Commission acknowledges that the amendment could allow CKEA-FM to better compete in the Edmonton market. However, CKEA-FM launched in September 2010 and it is not uncommon for stations to experience financial difficulties during the initial years of operation.

10. The licence for the station was granted as part of a highly competitive process. The Commission granted the licence to Harvard in Broadcasting Decision 2008-288 based in part on the quality of the application, including the requirements to ensure that 15% of all music aired weekly is drawn from category 3 and to exceed the minimum Canadian content levels for such music set out in the *Radio Regulations, 1986* (the Regulations) by ensuring that at least 20% of its musical selections from subcategory 34 are Canadian. The Commission was of the view that these commitments would make a substantial contribution to musical diversity in the Edmonton market. The Commission reiterated this position in Broadcasting Decision 2009-438 where it approved a subsequent application by Harvard to operate CKEA-FM at 95.7 MHz.
11. As a general rule, the Commission expects an applicant that is awarded a licence a part of a competitive process to maintain its programming commitments for at least the first licence term. Given that the above-noted programming commitments were factors in the original licensing decision, the Commission considers that granting the requested amendment at the first licence renewal when the licensee has failed to provide the promised programming would call into question the integrity of the Commission's licensing process.
12. Furthermore, as indicated in Broadcasting Information Bulletin 2014-608, the Commission's general practice is to deny an application for licence amendment when it is directly linked to an instance of non-compliance. Licensees must demonstrate that they are operating in compliance with their conditions of licence prior to filing such amendment applications.
13. The Commission considers that the licensee has not, at this time, provided a compelling case for the Commission to deviate from these practices.
14. In light of all of the above, the Commission **denies** the requested licence amendment relating to the broadcast of music from content category 3.
15. In Broadcasting Public Notice 2008-67, the Commission announced amendments to the Regulations to require all commercial stations, including CKEA-FM, to devote 20% of their weekly selections from subcategory 34 to Canadian selections, in accordance with paragraph 94 of the Commercial Radio Policy 2006 (see Broadcasting Public Notice 2006-158). This replicates the requirement for selections from subcategory 34 set out in CKEA-FM's current conditions of licence. The Commission has therefore deleted this reference from the conditions of licence set out in the appendix to this decision since the licensee is now obliged to meet its commitment by regulation.

Regulatory measures

16. The Commission's approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2014-608. Under that approach, each instance of non-compliance is evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The circumstances, the arguments

provided by the licensee and the actions taken to rectify the situation are also considered.

17. The Commission is satisfied with the initiatives that the licensee has taken to ensure that CKEA-FM operates in compliance with its conditions of licence. Accordingly, the Commission considers it appropriate to renew the licence for CKEA-FM for a full seven-year term.
18. However, given the serious nature of the non-compliance with respect to the airplay of category 3 music, the Commission finds it appropriate to require CKEA-FM to make, by the end of the 2015-2016 broadcast year, an additional CCD contribution over and above that required by the Regulations or its conditions of licence. This is a remedial measure for harm caused to the Canadian broadcasting system as a result of the non-compliance. Based on CKEA-FM's annual revenues and taking into account the seriousness of the non-compliance, the Commission finds it appropriate to require an additional contribution of \$3,750. A **condition of licence** to that effect is set out in the appendix to this decision.

Conclusion

19. The Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CKEA-FM Edmonton from 1 September 2015 to 31 August 2022. The **conditions of licence** are set out in the appendix to this decision.

Employment equity

20. Because the licensee is subject to the *Employment Equity Act* and file 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

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2015-199, 15 May 2015
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Use of frequency 95.7 MHz by the new FM radio station in Edmonton*, Broadcasting Decision CRTC 2009-438, 23 July 2009
- *Licensing of new radio stations to serve Edmonton, Alberta*, Broadcasting Decision CRTC 2008-288, 17 October 2008

- Amendments to the *Radio Regulations, 1986* - Implementation of the *Commercial Radio Policy 2006* and the *Digital Radio Policy*, Broadcasting Public Notice CRTC 2008-67, 23 July 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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

Appendix to Broadcasting Decision CRTC 2015-391

Conditions of licence and expectation for the English-language commercial radio programming undertaking CKEA-FM Edmonton, Alberta

Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, as well as to the conditions set out in the broadcasting licence for this undertaking.
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:
 - devote, in each broadcast week, a minimum of 40% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety; and
 - devote, between 6:00 a.m. and 6:00 p.m., in any period beginning on Monday of a week and ending on Friday of the same week, a minimum of 40% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety.

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

3. The licensee shall devote a minimum of 15% of all musical selections broadcast each broadcast week to music drawn from content subcategory 3 (Special Interest Music).
4. To fulfill its outstanding commitments to Canadian content development (CCD) set out in Appendix 6 to *Licensing of new radio stations to serve Edmonton, Alberta*, Broadcasting Decision CRTC 2008-288, 17 October 2008, the licensee shall file, by 30 November of each year and in a form deemed acceptable by the Commission, all proof of payment regarding the required over and above contribution to CCD to be made in the broadcast year ending the previous 31 August, as follows:
 - a) \$977,882 in the 2015-2016 broadcast year; and
 - b) \$1,076,066 in the 2016-2017 broadcast year.

At least 20% of the required contributions made in each broadcast year shall be allocated to FACTOR or MUSICACTION. Any remaining amounts of the contributions not allocated to FACTOR or MUSICACTION shall be allocated to an eligible CCD initiative as described in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006, as amended from time to time.

5. The licensee shall, by no later than 31 August 2016, make a \$3,750 contribution to Canadian content development (CCD) that is over and above the CCD contributions currently required pursuant to the *Radio Regulations, 1986* or by condition of licence. This contribution shall be devoted to FACTOR, MUSICATION and/or an eligible initiative as set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006. In addition, the licensee shall file, by 30 November 2016 and in a form deemed acceptable by the Commission, proof of payment regarding the additional contribution to CCD as well as supporting documentation for the eligibility of the contribution if it is not made in whole or in part to FACTOR or MUSICACTION.

Expectation

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.