



Broadcasting Decision CRTC 2015-409

PDF version

Reference: 2015-93

Ottawa, 31 August 2015

CPAM Radio Union.com inc.
Montréal, Quebec

Application 2014-0834-4, received 26 August 2014

CJWI Montréal – Licence renewal

*The Commission **renews** the broadcasting licence for the French-language ethnic commercial AM radio station CJWI Montréal from 1 September 2015 to 31 August 2017. This short-term licence renewal will allow for an earlier review of the licensee's compliance with its conditions of licence and with the Commission's regulatory requirements.*

Application

1. CPAM Radio Union.com inc. (CPAM) filed an application to renew the broadcasting licence for the French-language ethnic commercial AM radio station CJWI Montréal, which expires 31 August 2015. The Commission did not receive any interventions regarding this application.

Background

2. When it last renewed the broadcasting licence for CJWI in 2008 (see Broadcasting Decision 2008-335), the Commission determined that the licensee was in non-compliance with section 9(2) of the *Radio Regulations, 1986* (the Regulations), which relates to the filing of annual returns. It noted that the station's annual return for the broadcast year ending 31 August 2007 (i.e., the 2006-2007 broadcast year) was not filed by the prescribed date of 30 November 2007.

Non-compliance

3. In Broadcasting Notice of Consultation 2015-93, the Commission stated that CPAM is in apparent non-compliance with requirements relating to the filing of annual returns and Canadian content development (CCD) contributions. Specifically, the licensee is in apparent non-compliance, for the 2008-2009 through 2012-2013 broadcast years, with the following:
 - section 9(2) of the Regulations, which relates to the filing of annual returns; and

- section 15(2) of the Regulations, which relates to contributions to CCD.

Annual returns

4. Section 9(2) of the Regulations requires licensees to file an annual return by 30 November of each year for the broadcast year ending the previous 31 August. The specific filing requirements, including the requirement to file financial statements, are set out in Broadcasting Information Bulletin 2011-795. In the present case, CPAM filed the annual returns for CJWI in January 2014 for the 2008-2009 through 2011-2012 broadcast years, and in April 2014 for the 2012-2013 broadcast year.
5. The licensee stated that an accounting firm was responsible for the station's annual returns for eight years, and that following a restructuring, the new person responsible was unfamiliar with the Commission's deadline requirements. CPAM noted that it had several other commitments and was unable to appropriately follow up on the status of those annual returns.
6. In light of the above, the Commission finds the licensee in non-compliance with section 9(2) of the Regulations for the 2008-2009 through 2012-2013 broadcast years.

Contributions to Canadian content development

7. Section 15(2) of the Regulations sets out the basic CCD requirements for radio stations. In regard to CJWI, CPAM failed to provide proof of CCD payments for the 2008-2009 through 2012-2013 broadcast years. In a first deficiency letter,¹ Commission staff asked the licensee to comment on the apparent non-compliance relating to payment of basic CCD contributions. In its reply,² the licensee stated that its method of fulfilling CCD requirements involved the broadcast of the music of some Haitian music groups that did not receive airplay from other radio stations. It added that the Commission has previously accepted this type of initiative under CCD. It further stated that should the Commission determine that the missing CCD expenditures are to be paid, it would make payment within one week. Notwithstanding its statement above regarding the broadcast of Haitian music, the licensee also noted that its original CCD receipts were lost in a criminal fire.
8. In a second deficiency letter,³ Commission staff specified that pursuant to section 15(2) of the Regulations, CCD contributions must take the form of paid expenditures to eligible third parties. As part of its reply letter,⁴ CPAM provided what it considered to be proof of payment, three separate letters, each signed by a

¹ Sent by Commission staff to the licensee, dated 11 December 2014

² Sent by the licensee to Commission staff, dated 18 December 2014

³ Sent by Commission staff to the licensee, dated 24 December 2014

⁴ Sent by the licensee to Commission staff, dated 4 January 2015

Mr. Ronald Marchand attesting to having received a CCD contribution for each of the broadcast years in question.⁵

9. On 19 February 2015, Commission staff sent a letter to CPAM inviting the licensee to participate in a conference call to help staff better understand the circumstances surrounding the apparent non-compliance. In that same letter, Commission staff advised the licensee that the proof of payment submitted was not sufficient, and referred the licensee to Broadcasting Information Bulletin 2011-795, which clearly indicates at paragraph 16 the correct way to file all supporting documentation relating to CCD contributions. Commission staff also asked the licensee to provide a written summary of all of the discussed items.
10. In its summary letter dated 25 February 2015, CPAM indicated that CJWI changed locations four times over the broadcast years in question. It reiterated that most of the station's receipts were lost in a criminal fire during that period and that it had to request a new set of receipts for 2015. As part of its summary following the above-noted conference call, the licensee provided the Commission with a new set of documents it considered to be proof of CCD payments. Specifically, five separate letters signed by Mr. Marchand attesting to having received a specific amount of CCD contributions for each broadcast year were provided.⁶ However, the Commission did not receive any documents relating to payment for the basic CCD contributions for the 2008-2009 through 2012-2013 broadcast years until January 2015.
11. Broadcasting Information Bulletin 2011-795 specifies that CCD forms, which can be accessed from the Commission's web-based Data Collection System (DCS), must be included in annual returns. Links between all supporting documentation and the payments made, as identified in the CCD form, should be clearly set out in the CCD summary sheet.⁷ Supporting documentation must clearly indicate the name of the recipient of the CCD payment, the amount paid and the cheque and/or invoice number, and include copies of cancelled cheques or receipts, as well as documentation supporting the eligibility of the supported initiative.

⁵ The first letter addressed the 2011-2012 broadcast year (dated November 2012), the second the 2012-2013 broadcast year (dated November 2013), and the third the 2008-2009 through 2010-2011 broadcast years (dated December 2014). These letters were to replace the original receipts that were claimed to have been destroyed in the criminal fire.

⁶ All five letters were dated 23 February 2015.

⁷ A summary sheet is a document that reconciles all CCD payments, including cases where a payment made by the licensee is allocated to several radio stations in order to meet the CCD obligations of those stations. If payments are being allocated to more than one station, the summary sheet should show all of the licensee's stations and the allocation of all CCD payments within the group. The summary sheet must clearly distinguish between basic CCD contributions, over-and-above CCD contributions, and tangible benefits payments. All supporting documents should be provided in such a fashion that they are easy to understand and audit.

12. The Commission finds that completed CCD forms, and consequently proof of payment of CCD contributions, were not provided in a timely manner for the broadcast years in question. Moreover, subsequent documents provided by the licensee in January and February 2015 as proof of payment did not meet the requirements set out in paragraphs 18-20 of Broadcasting Information Bulletin 2011-795 regarding eligible initiatives and documentation supporting the eligibility of expenditures made. Given that sufficient proof of payment was not provided, the Commission was unable to determine whether the contributions were in fact made, and therefore whether they were made when required.
13. In light of the above, the Commission finds the licensee in non-compliance with section 15(2) of the Regulations for the 2008-2009 through 2012-2013 broadcast years.

Regulatory measures

14. 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.
15. Compliance with 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.
16. Further, it is important that radio station licensees make their required contributions to CCD, given that CCD initiatives 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. It is also important that licensees provide, by the required deadlines, proof of payment to such initiatives so that the Commission may verify licensees' compliance with regulatory requirements and conditions of licence relating to CCD.
17. Since the Commission is charged with the supervision and regulation of the Canadian broadcasting system, a licensee that does not file requested material in a timely manner, or does not file such material at all, affects the ability of the Commission to independently confirm the licensee's adherence to 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. Given the above, the Commission views any non-compliance as a very serious matter.
18. As set out in Broadcasting Regulatory Policy 2014-554, for stations that are in non-compliance, the following measures may be applied on a case-by-case basis depending on the nature of the non-compliance:

- renew the licence for a short term;
- impose additional conditions of licence;
- call the licensee to a public hearing to respond to and discuss apparent non-compliance;
- following a public hearing, issue a mandatory order requiring the licensee to comply with regulatory requirements. Such orders are made orders of the Federal Court and can be enforced through contempt of court proceedings;
- suspend the licence;
- not renew the licence;
- revoke the licence.

19. In that same regulatory policy, the Commission introduced further measures to address the potential harm that could be caused to the broadcasting system by non-compliance with various regulations and conditions of licence. For serious cases of non-compliance, the Commission considered it appropriate to introduce a measure by which, in certain circumstances, stations in non-compliance would announce that finding on air, an approach similar to that currently used by the Canadian Broadcast Standards Council (CBSC). In regard to non-compliance relating to programming and CCD requirements, it considered it appropriate to introduce a measure by which, in certain circumstances, radio station licensees in non-compliance would be required to direct further CCD contributions to funds such as FACTOR, MUSICACTION or the Community Radio Fund of Canada, rather than to discretionary initiatives such as talent contests, or to make additional CCD contributions that are over and above those required by the Regulations and by existing condition of licence.

20. In regard to the present case, Commission staff asked⁸ CPAM to comment on the following ways to address, during the course of the next licence term, the station's repeated non-compliance:

- measures such as those set in paragraph 18 above;
- a requirement to make additional CCD contributions over and above those required pursuant to the Regulations or by condition of licence; and
- a requirement to announce on air that the station has been in non-compliance and that the licensee has put measures into place to ensure that the non-compliance does not occur again.

21. In reply, CPAM stated that a short-term licence renewal of five years would be a reasonable way to remedy the non-compliance that occurred during the current licence term.

⁸ In letters dated 11 December 2014 and 24 December 2014, and in a 20 February 2015 conference call with Commission staff, as mentioned in CJWI's letter dated 25 February 2015.

22. 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, CPAM's non-compliance relates to fundamental aspects of the broadcasting regulatory system and the broadcasting licence for CJWI. Given the nature, extent and recurrence of the non-compliance, a short-term licence renewal of two years for CJWI is appropriate.
23. Further, given the seriousness of the non-compliance, that this is the second consecutive licence term that CJWI has been in a situation of non-compliance, that CJWI was in a situation of non-compliance in the previous licence term and during each and every verified broadcast year of the current licence term, and the harm caused to the broadcasting system by the non-compliance, the Commission finds it appropriate to require CPAM to make, by the end of the 2015-2016 broadcast year, an additional CCD contribution that is over and above those required by the Regulations or by existing conditions of licence. Based on CJWI's annual revenues and the amount of CCD contributions that were required, and taking into account the serious nature of the non-compliance, the Commission finds that an additional contribution of \$2,500 is appropriate. A **condition of licence** to that effect is set out in Appendix 1 to this decision.
24. Finally, considering the serious and repeated nature of CJWI's non-compliance and given the potential impact of that non-compliance on Canadians, the Commission finds it appropriate to require CPAM to broadcast three times a day, between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive business days, within the 14-day period immediately following the issuance of the present decision, an announcement regarding the licensee's non-compliance. To confirm compliance with this requirement, the licensee must provide to the Commission the audio recordings for the broadcast days during which the announcement was broadcast, and file a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CJWI Montréal*, set out in Appendix 2 to this decision, by no later than 14 days following the final broadcast of the announcement. A **condition of licence** to that effect is set out in Appendix 1 to this decision.
25. Should CPAM again breach its regulatory requirements, the Commission may consider recourse to additional measures as noted above, including suspension, non-renewal or revocation of the broadcasting licence for CJWI under sections 9 and 24 of the *Broadcasting Act* (the Act).

Conclusion

26. In light of the above, the Commission **renews** the broadcasting licence for the French-language ethnic commercial AM radio programming undertaking CJWI Montréal from 1 September 2015 to 31 August 2017. 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 **conditions of licence** are set out in Appendix 1 to this decision.

Reminder

27. Pursuant to section 22 of the Act, the broadcasting licence renewed in this decision will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry lapses.

Secretary General

Related documents

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2015-93, 17 March 2015
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *CJWI Montréal – Licence renewal*, Broadcasting Decision CRTC 2008-335, 1 December 2008

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

Appendix 1 to Broadcasting Decision CRTC 2015-409

Conditions of licence, encouragement and commitment for the French-language ethnic commercial AM radio Programming undertaking CJWI Montréal, Quebec

Conditions of licence

1. The licensee shall adhere to the conditions set out in the broadcasting licence for the undertaking as well as the conditions set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.
2. The licensee is exempted from the requirement of section 7(2) of the *Radio Regulations, 1986* that it devote 50% of its programming to third-language programming.
3. The licensee shall devote not less than 90% of its programming in each broadcast week to French-language ethnic programming, targeting the Haitian community, the Latin-American community, and the African community with French as its first or second language. The remaining 10% of its programming may be in third languages, i.e., in languages other than French, English or an Aboriginal language.
4. The licensee shall, as an exception to sections 2.2(3) to 2.2(10) of the *Radio Regulations, 1986*, in each broadcast week,
 - a) devote a maximum of 30% of the musical selections that it broadcasts to selections from content category 2 (Popular music);
 - i. the licensee shall devote at least 35% of all category 2 musical selections that it broadcasts to Canadian selections;
 - ii. the licensee shall devote a maximum of 15% of all category 2 musical selections that it broadcasts to French-language vocal music selections and a maximum of 15% to English-language vocal musical selections.
 - b) devote at least 70% of the musical selections that it broadcasts to musical selections from content subcategory 33 (World beat and international);
 - i. the licensee shall devote at least 35% of all musical selections from subcategory 33 that it broadcasts to Canadian selections.
5. The licensee shall, by no later than 31 August 2016, make a \$2,500 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,

MUSICACTION 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.

6. a) The licensee shall broadcast the following announcement three times a day, between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive business days, within the 14-day period immediately following the issuance of *CJWI Montréal – Licence renewal*, Broadcasting Decision CRTC 2015-409, 31 August 2015 (Broadcasting Decision 2015-409):

Radio frequencies are a limited public resource. Holding a broadcasting licence is a privilege, and broadcasters are required to abide by a number of regulations and conditions of licence in order to operate a radio station. In Broadcasting Decision 2015-409, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986*. This non-compliance occurred during the 2008-2009 through 2012-2013 broadcast years and is a recurring issue. CJWI has put measures in place to ensure that the non-compliance in question does not reoccur.

- b) The licensee shall provide to the Commission the audio recordings for the broadcast days during which the announcement was broadcast, and file a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CJWI Montréal*, set out in Appendix 2 to Broadcasting Decision 2015-409, by no later than 14 days following the final broadcast of the announcement.

For the purposes of these conditions of licence, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meanings as those set out in the *Radio Regulations, 1986*.

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.

Commitment

The licensee has committed to devote 35 to 40% of its programming per broadcast week to spoken word programming that is of particular interest to the ethnocultural groups targeted.

Appendix 2 to Broadcasting Decision CRTC 2015-409

Attestation as to the broadcast of the non-compliance announcement on CJWI Montréal

In regard to the requirements set out in condition of licence 6 in Appendix 1 to *CJWI Montréal – Licence renewal*, Broadcasting Decision CRTC 2015-409, 31 August 2015 (Broadcasting Decision 2015-409), I, _____ (NAME), on behalf of _____ (LICENSEE), certify that the announcement regarding CJWI Montréal's non-compliance with the *Radio Regulations, 1986* was duly broadcast three times a day, between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive business days, within the 14-day period immediately following the issuance of Broadcasting Decision 2015-409, as follows:

First date of broadcast:		Times	1:	2:	3:
Second date of broadcast:		Times	1:	2:	3:
Third date of broadcast:		Times	1:	2:	3:
Fourth date of broadcast:		Times	1:	2:	3:
Fifth date of broadcast:		Times	1:	2:	3:

Signature

Date