



Broadcasting Decision CRTC 2017-390

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References: Part 1 licence renewal and amendment applications posted on 30 March 2017 and 31 May 2017

Ottawa, 30 October 2017

RNC MEDIA Inc.

Donnacona and Sainte-Croix-de-Lotbinière, Quebec

Applications 2016-0725-1 and 2016-0916-6

CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière – Licence renewal and amendment

*The Commission **renews** the broadcasting licence for the French-language commercial radio station CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière from 1 January 2018 to 31 August 2024.*

*The Commission **denies** the application by RNC MEDIA Inc. to amend the broadcasting licence for CHXX-FM in order to delete conditions of licence relating to local presence and local programming.*

Applications

1. On 8 July 2016, RNC MEDIA Inc. (RNC) filed an application (2016-0725-1) to renew the broadcasting licence for the French-language commercial radio station CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière, Quebec, which expires 31 December 2017.¹
2. On 30 August 2016, RNC filed a second application (2016-0916-6) to amend the broadcasting licence for CHXX-FM. Specifically, the licensee proposed to delete the station's conditions of licence relating to maintaining a studio in Donnacona and the production of local programming intended for the region of Portneuf, Québec. These conditions of licence, set out in Broadcasting Decision 2013-650, read as follows:
 - The licensee shall maintain a studio in Donnacona to ensure local coverage and a local presence.
 - In each broadcast week, the licensee shall broadcast at least 14 hours of local programming produced at its Donnacona studio and targeting residents of the Portneuf area.

1. The broadcasting licence for CHXX-FM was administratively renewed until 31 December 2017 in Broadcasting Decision 2017-318.

3. According to the licensee, these conditions of licence are obsolete given that the station also serves the city of Québec as a result of the technical changes approved in Broadcasting Decision 2006-349. RNC further stated that CHXX-FM, like all radio stations from Québec, has an interest in Donnacona and will continue to serve that community as well as the Portneuf area.
4. The Commission received an intervention regarding the licence renewal application from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), to which RNC replied. It did not receive any interventions regarding the licence amendment application.

Background

5. In Decision 95-9, the Commission approved an application from La Coopérative du Courrier de Portneuf, on behalf of a corporation to be incorporated, for a broadcasting licence to operate a French-language radio station in Donnacona (CKNU-FM) with a transmitter in Sainte-Croix-de-Lotbinière. As indicated in that decision, the applicant intended to provide the first local radio service in Portneuf, noting that although Québec radio stations were received in Portneuf, they did not offer a truly local service. The assets of CKNU-FM were acquired by Genex Communications Inc. in 1998, and then by Radio Nord Communications Inc. (Radio Nord) in 2005.
6. In Broadcasting Decision 2006-349, the Commission approved two applications by Radio Nord relating to CKNU-FM (to delete the station's condition of licence restricting the solicitation of advertising to the Portneuf area and to change its authorized contours), which gave the station access to the Québec advertising market. Radio Nord had indicated that, at that time, 76% of the Donnacona audience listened to stations in the Québec market and that those stations captured 74% of Portneuf listeners. The Commission therefore concluded that with the deletion of the condition of licence relating to the solicitation of advertising and the technical changes, CKNU-FM could be considered a station serving the Québec market. The Commission based this decision on CKNU-FM's precarious financial situation, as well as improving the quality of its signal to allow the station to better compete with other radio stations in Québec.
7. In March 2007, Radio Nord Communications Inc. changed its name to RNC MEDIA Inc. The call sign of CKNU-FM also changed the same year to the current CHXX-FM.
8. In Broadcasting Decision 2013-650, the Commission renewed CHXX-FM's broadcasting licence but denied an application to amend the station's conditions of licence. The requested amendments sought to delete conditions relating to maintaining a studio in Donnacona and to the production of local programming for the Portneuf area, namely the same conditions of licence as those proposed in the present application. The Commission denied the requested amendments because CHXX-FM was the only radio station to provide truly local programming for Portneuf listeners, its initial primary market. The Commission also found that RNC

had been unable to clearly demonstrate how approving its application would have a direct major impact on CHXX-FM's financial situation.

Commission's analysis

9. The Commission considers that the issues it must address are the following:
- the licence renewal application for CHXX-FM;
 - non-compliance relating to French-language vocal music;
 - the licence amendment application for CHXX-FM;
 - the existence of an economic need justifying the amendment;
 - the economic impact of the amendment on other radio stations in the market; and
 - the impact that deleting the conditions of licence would have on local programming offered to the community of Portneuf.

Renewal of the broadcasting licence for CHXX-FM

Non-compliance

10. In Broadcasting Decision 2013-650, the Commission granted CHXX-FM a short-term licence renewal because of the station's non-compliance relating to Canadian talent development² (CTD) contributions and the broadcast of French-language vocal music (FVM).
11. During the current licence term, a compliance evaluation of CHXX-FM's programming found that during the week of 21 to 27 February 2016, the station devoted 63.5% of musical selections from content category 2 (Popular Music) to FVM, which is 1.5% below the regulatory level of 65% set out in section 2.2(5) of the *Radio Regulations, 1986* (the Regulations).
12. RNC explained that the insufficient level of FVM stemmed from the incorrect classification of certain musical selections. It indicated that it has since adjusted the classification of the problematic selections and has established parameters to prevent the issue from recurring. The licensee added that the selections deemed potentially problematic would henceforth be analyzed by an accreditation firm, which would ensure the compliance of the content being broadcast.
13. In light of the above, the Commission finds RNC in non-compliance with section 2.2(5) of the Regulations.

2. Now known as Canadian content development.

Intervention and reply

14. ADISQ submitted that the non-compliance is serious and recurrent and that the onus is on licensees to ensure that content that is broadcast complies with the Regulations. It submitted that RNC had downplayed the situation rather than acknowledging it and ensuring it would not happen again.
15. In its reply, RNC rejected ADISQ's statements and maintained that its failure to comply with FVM requirements stems from classification errors or the use of montages that were ineligible. It nevertheless expressed its willingness to meet the objectives of the *Broadcasting Act* (the Act) and those established by the Commission.
16. RNC also noted the change in format for the station implemented in March of this year, making CHXX-FM the fourth station owned and operated by RNC under a popular music format. The licensee indicated that it had hired a general manager responsible for this format and for compliance by each of its stations.

Regulatory measures

17. 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 leading to the non-compliance, the arguments provided by the licensee and the action taken to rectify the situation are also considered.
18. In cases of non-compliance with Canadian programming requirements, the Commission may impose a condition of licence requiring the licensee to make an additional Canadian content development (CCD) contribution to rectify the situation. In this regard, it is important for licensees to fulfill their obligations to broadcast specific levels of Canadian content and FVM. Doing so ensures that Canadian francophone artists enjoy a certain level of exposure and receive appropriate royalties. Moreover, it benefits listeners of Canadian French-language music and supports the objectives of the Act, according to which the broadcasting system should safeguard, enrich and strengthen the cultural fabric of Canada, as well as reflect linguistic duality.
19. The Commission finds it appropriate to impose an additional CCD contribution to compensate for the harm caused to the broadcasting system. In order to establish the additional contribution that should be imposed on the licensee, the Commission must take into account the following factors:
 - the nature, seriousness and recurrence of the non-compliance;
 - the circumstances surrounding the non-compliance (for example, all legitimate and obvious attempts by the licensee to meet its regulatory obligations);

- the harm caused to the Canadian broadcasting system by the non-compliance; and
 - the licensee's annual revenues.
20. In this case, the Commission notes the circumstances surrounding the non-compliance relating to FVM, but considers this non-compliance serious. Further, it is the second consecutive licence term in which the licensee is in non-compliance with FVM requirements. When questioned on compensatory measures, the licensee agreed to the imposition of an additional CCD contribution of \$920. Accordingly, in the appendix to this decision, the Commission has set out a **condition of licence** requiring the licensee to:
- make an additional CCD contribution in the amount of \$920 by **31 August 2018**; and
 - file proof of payment by **30 November 2018**.
21. In addition, given the seriousness and recurrence of CHXX-FM's non-compliance, the Commission finds it appropriate to require the licensee to broadcast an announcement regarding its non-compliance three times a day, reasonably scheduled between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive days within 14 days following the beginning of the new licence term.³ To confirm its compliance with this requirement, the licensee must provide the Commission with the audio recordings for the broadcast days during which the announcement was broadcast and file the completed and signed *Attestation as to the broadcast of the non-compliance announcement on CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière* set out in Appendix 2 to this decision 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.
22. The Commission considers that these measures are sufficient and that it is therefore unnecessary to impose further measures on the licensee. Accordingly, the Commission considers it appropriate to renew CHXX-FM's licence until 31 August 2024.

Amendment to the broadcasting licence for CHXX-FM

Economic need

23. In support of its request to delete the conditions of licence at issue, RNC pointed to, among other things, CHXX-FM's financial difficulties.
24. However, the Commission notes that RNC is not expecting to make any changes to the station's financial projections and did not provide any projections to support its

3. This measure is set out in Broadcasting Regulatory Policy 2014-554.

application. Further, the licensee has not demonstrated how the requested amendment would help CHXX-FM to restore its financial health.

25. Consequently, the Commission considers that RNC has not demonstrated an economic need justifying the deletion of CHXX-FM's conditions of licence relating to local presence and local programming.

Economic impact of the amendment on other stations in the market

26. In the Commission's view, approving the applications would not have an undue negative financial impact on the other stations in the Québec radio market, given that CHXX-FM is already authorized to serve that market.

Impact that deleting the conditions of licence would have on local programming offered to the community of Portneuf

27. Although listeners in Portneuf are served by a number of radio stations in the Québec market, CHXX-FM is currently the only broadcasting service required to offer local programming specifically directed to Portneuf listeners. Approving the application to amend the licence would therefore result in a decrease in local programming for that community.
28. In light of the above, the Commission finds that it would not be appropriate to approve RNC's request to delete certain of CHXX-FM's conditions of licence.

Conclusion

29. In light of all of the above, the Commission **renews** the broadcasting licence for the French-language commercial radio programming undertaking CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière from 1 January 2018 to 31 August 2024. The terms and **conditions of licence** are set out in the appendix to this decision.
30. Further, the Commission **denies** the application by RNC MEDIA Inc. to amend the broadcasting licence for CHXX-FM in order to delete the conditions of licence relating to maintaining a studio in Donnacona and the production of local programming intended for the region of Portneuf.

Reminders

31. Should the licensee continue to be in non-compliance with regulatory requirements, the Commission may consider recourse to additional measures as part of the next licence renewal process, including the issuance of a mandatory order or the revocation or non-renewal of the licence.
32. 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

- *Various radio stations – Administrative renewals*, Broadcasting Decision CRTC 2017-318, 31 August 2017
- *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
- *CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière – Licence renewal*, Broadcasting Decision CRTC 2013-650, 4 December 2013
- *CKNU-FM Donnacona and CKNU-FM-1 Sainte-Croix-de-Lotbinière – Licence renewal and amendment*, Broadcasting Decision CRTC 2006-349, 10 August 2006
- *New radio program undertaking*, Decision CRTC 95-9, 13 January 1995

This decision is to be appended to the licence.

Appendix 1 to Broadcasting Decision CRTC 2017-390

Terms, conditions of licence, expectation and encouragement for French-language commercial radio programming undertaking CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière, Quebec

Terms

The licence will expire 31 August 2024.

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 well as to the conditions set out in the broadcasting licence for the 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:
 - a) devote, in each broadcast week, at least 45% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety; and
 - b) devote, between 6 a.m. and 6 p.m. from Monday to Friday of the same broadcast week, at least 45% of its musical selections from content category 2 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 meanings as those set out in the Regulations.

3. The licensee shall maintain a studio in Donnacona to ensure local coverage and a local presence.
4. In each broadcast week, the licensee shall broadcast at least 14 hours of local programming produced at its Donnacona studio and targeting residents of the Portneuf area.
5. In addition to any contributions to Canadian content development (CCD) required under section 15 of the *Radio Regulations, 1986*, as amended from time to time, the licensee shall make an additional contribution of \$920 to CCD by 31 August 2018. In addition, by 30 November 2018, the licensee shall file proof of payment of this contribution in a form deemed acceptable by the Commission proof of payment of this contribution.

The licensee shall allocate at least 20% of this amount to FACTOR or MUSICACTION. The remainder shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

6. In regard to the licensee's non-compliance with the *Radio Regulations, 1986*, as set out in the present decision:
 - a) The licensee shall broadcast the announcement below three times a day, reasonably scheduled between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m. for five consecutive days within 14 days following 1 January 2018, the beginning of the new licence term:

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 2017-390, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986*. The instances of non-compliance are a recurring issue. CHXX-FM has put measures in place to ensure that the instances of non-compliance in question do not recur.

- 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 CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière* set out in Appendix 2 to *CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière – Licence renewal and amendment*, Broadcasting Decision CRTC 2017-390, 30 October 2017, no later than 14 days following the final broadcast of the announcement.

Expectation

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

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.

Appendix 2 to Broadcasting Decision CRTC 2017-390

Attestation as to the broadcast of the non-compliance announcement on CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de- Lotbinière

In regard to the requirements set out in condition of licence 6 in Appendix 1 to *CHXX-FM Donnacona and its transmitter CHXX-FM-1 Sainte-Croix-de-Lotbinière – Licence renewal and amendment*, Broadcasting Decision CRTC 2017-390, 30 October 2017, I _____ (NAME), on behalf of _____ (LICENSEE), certify that the announcement regarding CHXX-FM Donnacona's non-compliance with the *Radio Regulations, 1986* was duly broadcast three times a day, and distributed in a reasonable manner between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m. for five consecutive days within the 14-day period beginning 1 January 2018, the beginning of the new licence term, 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