



Broadcasting Decision CRTC 2017-397

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Reference: Part 1 licence renewal application posted on 27 April 2017

Ottawa, 3 November 2017

DARR FM Radio Ltd.
Saint John, New Brunswick

Public record for this application: 2016-0975-2

CJRP-FM Saint John and its transmitter CJRP-FM-1 Rothesay – Licence renewal

*The Commission **renews** the broadcasting licence for the English-language commercial specialty (Christian music) radio station CJRP-FM Saint John, New Brunswick, and its transmitter CJRP-FM-1 Rothesay from 1 January 2018 to 31 August 2021.*

This short-term renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.

Application

1. DARR FM Radio Ltd. (DARR FM) filed an application to renew the broadcasting licence for the English-language commercial specialty (Christian music) radio station CJRP-FM Saint John, New Brunswick, and its transmitter CJRP-FM-1 Rothesay, which expires 31 December 2017.¹ The Commission did not receive any interventions regarding this application.

Background

2. In Broadcasting Decision 2010-410, the Commission granted CJRP-FM, then licensed to TFG Communications Inc. (TFG), a short-term licence renewal due to TFG's non-compliance with requirements relating to Canadian talent development (CTD) and the provision of annual returns. In Broadcasting Decision 2010-601, the Commission approved an application by Pritchard Broadcasting Inc. (Pritchard) for authority to acquire from TFG, as part of a corporate reorganization, the assets of CJRP-FM and its transmitter CJRP-FM-1.
3. In Broadcast Decision 2013-647, the Commission once again granted CJRP-FM a short-term licence renewal, due to continued non-compliance with requirements relating to CTD and Canadian content development (CCD) contributions, and to non-

¹ In Broadcasting Decision 2017-318, the Commission administratively renewed the broadcasting licence for CJRP-FM and its transmitter from 1 September 2017 to 31 December 2017.

compliance with the station's condition of licence relating to the broadcast of spoken word programming.

4. In Broadcasting Decision 2014-36, the Commission approved an application by James Houssen, on behalf of a corporation to be incorporated, for authority to acquire from Pritchard the assets of CJRP-FM and its transmitter CJRP-FM-1. In that decision, the Commission also approved a request by the applicant to replace the station's condition of licence relating to the broadcast of spoken word programming with a condition of licence relating to the broadcast of Christian music. On 6 February 2014, DARR FM Radio Ltd. was incorporated to become the licensee.

Non-compliance

5. After examining the public record for this application, the Commission finds that the issues it must address relate to the licensee's apparent non-compliance with requirements relating to the following:
 - the broadcast of Canadian musical selections;
 - the broadcast of non-classic religious musical selections; and
 - the submission of radio monitoring materials.

Broadcast of Canadian musical selections

6. Section 2.2(8) of the *Radio Regulations, 1986* (the Regulations) sets out that the licensee of a commercial radio station must, in each broadcast week, devote at least 35% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety. Section 2.2(9) of the Regulations sets out that the licensee of a commercial radio station must, between 6:00 a.m. and 6:00 p.m., in any period beginning on a Monday and ending on the Friday of that week, devote at least 35% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.
7. A monitoring evaluation of CJRP-FM's programming for the week of 14 to 20 June 2015 showed that no content category 2 Canadian musical selections were broadcast during that week. Specifically, of the 224 musical selections broadcast during that week (which includes 108 musical selections broadcast between 6:00 a.m. and 6:00 p.m. from the Monday to the Friday of that week), none qualified as Canadian selections.
8. DARR FM indicated that this apparent non-compliance was related to its broadcast of Gospel songs from the 1940s through the 1960s that were performed by popular artists. Specifically, it cited its confusion over whether such songs counted as hit musical selections. The licensee stated that constant monitoring now takes place to evaluate each music track for its proper content category. It further stated that going

forward, to avoid future non-compliance, it will refrain from inserting music from the past from popular artists.

9. Following the issuance of Broadcasting Regulatory Policy 2009-61, in which the Commission set out its policy regarding the broadcast of hits by English-language radio stations, the Commission implemented a reclassification system for all content category 2 and content category 3 (Special Interest Music) hit musical selections. Specifically, any musical selection (including content category 3 musical selections) that has charted² is automatically classified as a content category 2 musical selection, as defined in Broadcasting Regulatory Policy 2010-819.
10. Pursuant to the above, hit musical selections previously identified by the licensee as non-classic religious musical selections (content subcategory 35) were reclassified as content category 2 musical selections. However, even with this reclassification of CJRP-FM's musical selections, none of the hits that were broadcast on the station during the week in question qualified as Canadian selections. Consequently, none of the musical selections broadcast on CJRP-FM from 14 to 20 June 2015 qualified as Canadian selections.
11. In light of the above, the Commission finds the licensee in non-compliance with sections 2.2(8) and 2.2(9) of the Regulations.

Broadcast of non-classic religious music

12. CJRP-FM's condition of licence relating to the broadcast of religious musical selections, set out in the appendix to Broadcasting Decision 2014-36, reads as follows:

The licensee shall devote at least 90% of all musical selections broadcast each broadcast week to selections from 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.
13. A monitoring evaluation of CJRP-FM's programming for the week of 14 to 20 June 2015 revealed that 87.92% of the musical selections broadcast during that week were selections from subcategory 35, which is below the required 90%.
14. DARR FM explained that it was not very familiar with the various categories and subcategories for radio set out in Broadcasting Regulatory Policy 2010-819.
15. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to the broadcast of religious musical selections.

² The charts that the Commission uses to determine the level of hits broadcast by English-language commercial FM radio stations are set out in Circular No. 422.

Submission of radio monitoring materials

16. Sections 8(1) through (6) of the Regulations set out requirements relating to keeping, retaining and furnishing to the Commission audio recordings and program logs. Section 9(3)(b) of the Regulations sets out the information on musical selections that licensees must include when filing music lists for any period specified by the Commission.
17. An analysis of CJRP-FM's program logs and music lists revealed that certain musical selections that were aired were not listed, and that certain musical selections that were listed were not aired.
18. In light of the above, the Commission finds the licensee in non-compliance with sections 8(1)(c), 8(2), 8(4) and 9(3)(b) of the Regulations.

Regulatory measures

19. 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 actions taken to rectify the situation are also considered.
20. Although the precise nature of the present instances of non-compliance is not the same as those identified in the last two licence renewal decisions for CJRP-FM, this is the third consecutive licence term in which the station is in non-compliance. Further, the Commission considers the present instances of non-compliance to be serious. Consequently, the Commission finds it appropriate to renew the station's broadcasting licence for a period of four years (which takes into account the four-month period for which the broadcasting licence was administratively renewed in Broadcasting Decision 2017-318).
21. In Broadcasting Regulatory Policy 2014-554, in regard to non-compliance relating to programming (including music programming), the Commission considered it appropriate to introduce a measure by which, in certain circumstances, radio station licensees in non-compliance would be required to make additional CCD contributions that are over and above those required by the Regulations and by existing conditions of licence.
22. When a licensee is in non-compliance with requirements relating to music programming, harm to the broadcasting system may be caused. In the present case, the shortfall in the broadcast of Canadian musical selections deprived certain classes of artists of airplay that the licensee was required to provide, as well as royalties for those artists. Furthermore, Canadian music listeners were deprived of the opportunity to listen to Canadian music, which runs counter to the objectives of the

Broadcasting Act (the Act) regarding safeguarding, enriching and strengthening the cultural fabric of Canada.

23. Commission staff asked DARR FM to comment on the possible imposition of a condition of licence requiring the licensee to make, by 31 August 2018, an additional CCD contribution of up to \$6,000 as compensation for the harm caused to the Canadian broadcasting system through its non-compliance. In reply, DARR FM stated that an additional \$6,000 CCD contribution would be excessive, and indicated that it would agree instead to make an additional CCD contribution of \$600 (\$100 per month for six consecutive months).
24. Based on the seriousness of the non-compliance and given the licensee's reply, the Commission considers it appropriate to require DARR FM to make an additional CCD contribution of \$1,000 to address its shortfall regarding the broadcast of Canadian content category 2 musical selections. A **condition of licence** to that effect is set out in Appendix 1 to this decision.
25. Furthermore, given the nature of the instances of non-compliance, and given that this is the third licence term during which this station has been in non-compliance, the Commission finds it appropriate to require CJRP-FM to broadcast an announcement regarding its non-compliance three times a day, distributed in a reasonable manner between 6:00 a.m. and 10:00 a.m. or between 4:00 p.m. and 6:00 p.m., for five consecutive days, within 14 days beginning 1 January 2018. 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 CJRP-FM Saint John and its transmitter CJRP-FM-1* Rothesay, 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.

Conclusion

26. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language commercial specialty (Christian music) radio programming undertaking CJRP-FM Saint John and its transmitter CJRP-FM-1 Rothesay from 1 January 2018 to 31 August 2021. This short-term licence renewal will enable the Commission to review, at an earlier date, the licensee's compliance with regulatory requirements. The terms and **conditions of licence** are set out in Appendix 1 to this decision.

Reminders

27. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. The submission of complete and accurate program logs, audio recordings and music lists enables the Commission to conduct an analysis of a station's programming to verify compliance with regulatory requirements and

conditions of licence. The retention of complete and accurate radio monitoring materials also makes it possible for the Commission to investigate a station's programming in the case of complaints. As such, any licensee that does not file requested material in a timely manner, files material that is incomplete, or does not file such material at all, affects the ability of the Commission to adequately perform its duty 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.

28. Should the licensee continue to be in non-compliance with regulatory requirements during the next licence term, the Commission may consider recourse to additional measures, including the issuance of a mandatory order, or the revocation or non-renewal of the licence.
29. The Commission reminds the licensee that it must pay any remaining tangible benefits stemming from the ownership transaction approved in Broadcasting Decision 2014-36. As noted in that decision, all discretionary amounts from those tangible benefits, which amount to 1% of the value of the transaction, must be allocated to parties and initiatives fulfilling the definition of eligible initiative set out in paragraph 108 of Broadcasting Public Notice 2006-158. Further, the licensee must file by 30 November following the end of the each broadcast year, in a form deemed acceptable by the Commission, proof of payment of the tangible benefits paid each broadcast year.
30. 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
- *CJRP-FM Saint John and CJRP-FM-1 Rothesay – Acquisition of assets and licence amendment*, Broadcasting Decision CRTC 2014-36, 3 February 2014
- *CJRP-FM Saint John and CJRP-FM-1 Rothesay – Licence renewal*, Broadcasting Decision CRTC 2013-647, 3 December 2013

- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010
- *CJRP-FM Saint John and its transmitter CJRP-FM-1 Rothesay – Acquisition of assets (corporate reorganization)*, Broadcasting Decision CRTC 2010-601, 20 August 2010
- *CJRP-FM Saint John and CJRP-FM-1 Rothesay – Licence renewal*, Broadcasting Decision CRTC 2010-410, 29 June 2010
- *Policy regarding the broadcast of hits by English-language FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-61, 11 February 2009
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Changes to the charts used by the Commission to determine hits*, Circular No. 422, 6 September 1996

This decision is to be appended to the licence.

Appendix 1 to Broadcasting Decision CRTC 2017-397

Terms, conditions of licence, expectation and encouragement for the English-language commercial specialty (Christian music) radio programming undertaking CJRP-FM Saint John and its transmitter CJRP-FM-1 Rothesay

Terms

The licence will expire 31 August 2021.

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, with the exception of condition of licence 7, as well as to the conditions set out in the broadcasting licence for the undertaking.
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, and *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010.
3. The licensee shall devote at least 90% of all musical selections broadcast each broadcast week to selections from subcategory 35 (Non-classic religious), as defined in *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010.
4. The licensee shall, by no later than 31 August 2018, make a \$1,000 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. The 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 2018, in a form deemed acceptable by the Commission, proof of payment regarding the additional CCD contribution 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.
5. In regard to the licensee's non-compliance with the *Radio Regulations, 1986*, as set out in the present decision, and with its condition of licence relating to the broadcast of non-classic religious musical selections:
 - a) The licensee shall broadcast the following announcement three times a day, distributed in a reasonable manner between 6:00 a.m. and 10:00 a.m. or between 4:00 p.m. and 6:00 p.m., for five consecutive days, within the 14-day period immediately 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 2017-397, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986* and its conditions of licence. The non-compliance with programming requirements is a recurring issue. CJRP-FM has put measures in place to ensure that the instances of non-compliance in question do 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 CJRP-FM Saint John and its transmitter CJRP-FM-1 Rothesay*, set out in Appendix 2 to *CJRP-FM Saint John and its transmitter CJRP-FM-1 Rothesay – Licence renewal*, Broadcasting Decision CRTC 2017-397, 3 November 2017, by 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 2017-397

Attestation as to the broadcast of the non-compliance announcement on CJRP-FM Saint John and its transmitter CJRP-FM-1 Rothesay

In regard to the requirements set out in condition of licence 5 in Appendix 1 to *CJRP-FM Saint John and its transmitter CJRP-FM-1 Rothesay – Licence renewal*, Broadcasting Decision CRTC 2017-397, 3 November 2017, I _____ (NAME) on behalf of _____ (LICENSEE), certify that the announcement regarding CJRP-FM Saint John’s non-compliance with the *Radio Regulations, 1986* as they relate to the broadcast of Canadian musical selections and to the submission of radio monitoring materials, and with its condition of licence relating to the broadcast of religious musical selections, was duly broadcast three times a day, and distributed in a reasonable manner between 6:00 a.m. and 10:00 a.m. or between 4:00 p.m. and 6:00 p.m., for five consecutive days, within the 14-day period beginning 1 January 2018, 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