



Broadcasting Decision CRTC 2018-328

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Reference: Part 1 licence renewal application posted on 12 March 2018

Ottawa, 29 August 2018

Multicultural Broadcasting Corporation Inc.
Calgary, Alberta

Public record for this application: 2017-0696-2

CKYR-FM Calgary – Licence renewal

*The Commission **renews** the broadcasting licence for the ethnic radio station CKYR-FM Calgary from 1 September 2018 to 31 August 2025.*

Application

1. Multicultural Broadcasting Corporation Inc. (MBC) filed an application to renew the broadcasting licence for the ethnic radio station CKYR-FM Calgary, Alberta, which expires 31 August 2018. The Commission did not receive any interventions regarding this application.

Non-compliance regarding Canadian content development contributions

2. Pursuant to condition of licence 6 set out in Appendix 2 to Broadcasting Decision 2012-308, in addition to the required basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986* (the Regulations), the licensee was required to make an annual contribution of \$79,000 (\$553,000 over seven consecutive broadcast years) to CCD.¹ The Commission imposed this condition of licence based on the over-and-above CCD commitment made by MBC during the competitive process that led to the issuance of its licence.
3. As noted in Broadcasting Information Bulletin 2011-795 (the Bulletin), when submitting documentation for CCD expenditures relating to organizations other than FACTOR or MUSICACTION, licensees must provide sufficient details to clearly show how a particular initiative contributes to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists, as well as how the initiative meets the criteria for an eligible initiative set out in

¹ In a decision letter dated 22 August 2014, the Commission approved the licensee's request to be exempted from the requirement to direct at least 20% of its CCD contribution to FACTOR. Consequently, the licensee was authorized to direct all over-and-above CCD funding to eligible discretionary initiatives, as defined at paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

Broadcasting Public Notice 2006-158 (the Commercial Radio Policy). As indicated in the Bulletin, documentation must demonstrate the eligibility of the initiative and must show the desired purpose of the funds and how the funds are actually used, as well as include proof of payment.

4. As an example, the Commission stated in the Bulletin that supporting documentation for payments made to a music festival should include the following items to support the expenditure: a brochure from the event sponsored indicating that the event took place, a letter from the recipient organization confirming the uses of the funding and a brief summary of how the event meets the criteria for an eligible initiative. The Commission also indicated that the documentation should always include information regarding revenues generated by the event, the organization that retained the revenues, the manner in which tickets were distributed to the public, the artists that were sponsored with the funds and proof of the licensee's independence from the recipient organization. In the absence of such documentation, the Commission cannot deem the contributions eligible.
5. In CKYR-FM's case, the licensee was first informed in a letter dated 17 January 2018 that it did not file sufficient proof of payment or eligibility for some of its contributions reported for the 2012-2013 through 2015-2016 broadcast years, resulting in a potential shortfall of \$265,986. That letter detailed all claimed expenses that were missing the necessary documentation for those broadcast years. The letter required the licensee to submit all missing supporting documentation by 31 January 2018, a deadline that was subsequently extended to 15 February 2018.
6. In response, MBC stated that it had never been advised by the Commission that documentation attesting to the CCD expenditures was either deficient or non-compliant. It added that had it been alerted years ago that the format of its reporting was either confusing or difficult to digest, it would have made changes in a forthright and timely manner.
7. The licensee recognized that it did not initially file all of the photocopies of cashed cheques and that the lists of payments to recipients did not provide sufficient details for Commission staff to analyze and verify in the first instance. It indicated that the problem related to the submission of receipts and the form of documentation that was retained by way of credit card receipts and photocopies of cashed cheques, which were then uploaded as attachments with the annual return.
8. The licensee further indicated that it had since created templates for the submission of detailed annual reports on CCD expenditures and recipients, correlating the expenditures, their qualification and the cheques, bank drafts or other forms of payment. It stated that in the future all of this documentation will be included with the annual return, alleviating any issues.
9. MBC also submitted documentation on 15 February 2018 and claimed that this documentation provided evidence of its CCD expenditures, except for four outstanding documents for the 2012-2013 and 2013-2014 broadcast years

representing a \$927.97 shortfall. On 3 April 2018, the licensee filed one of these documents and submitted that the shortfall now amounted to \$472.97.

Commission's analysis

10. Although MBC submitted additional documentation in support of its claimed CCD payments on 15 February and 3 April 2018, the Commission has determined that the CCD shortfall amounts to \$135,617, which represents approximately 50% of the licensee's total CCD obligations up to the 2015-2016 broadcast year.
11. The Commission notes that the CCD shortfall is related to contributions that were allocated to discretionary initiatives. In the Commission's view, these contributions are ineligible due to the licensee's inability to provide sufficient documentation to demonstrate proof of payment and/or eligibility according to the criteria set out in the Commercial Radio Policy.
12. Specifically, the licensee provided proof of payment for certain claimed expenditures and a description of the expenditures. However, for approximately half of the claimed initiatives, the licensee did not provide third-party documentation, such as an invoice or a receipt from the party stating how the funds were used and how this meets the requirements set out in the Commercial Radio Policy, as required in the Bulletin. Documentation from an independent third party is required to provide further corroboration regarding the expense and ensure that the funds are spent in an appropriate fashion. The Commission requires this level of documentation in order to substantiate that all CCD expenditures are spent in accordance with the Commercial Radio Policy and are therefore eligible.
13. In other instances, the licensee did provide proof of payment and third-party documentation, but the initiatives were deemed ineligible by the Commission because the expenditures were determined to have been directed towards non-eligible activities or the supporting documentation did not appear to be reliable or accurate. For example, the licensee claimed a \$20,000 contribution to a music production company in the 2014-2015 broadcast year and a \$20,500 contribution in the 2015-2016 broadcast year (for a total of \$40,500). The supporting documentation provided by the licensee in relation to these claimed expenses was not accurate, coherent and reliable. Therefore, the Commission determined that the initiative was ineligible.
14. Consequently, the level of documentation submitted by the licensee did not allow the Commission to ensure that all CCD expenditures were spent according to the criteria set out in the Commercial Radio Policy and ultimately contributed to the Canadian broadcasting system.
15. In light of the above, the Commission finds the licensee in non-compliance with condition of licence 6 set out in Appendix 2 to Broadcasting Decision 2012-308.²

² As modified in the Commission's decision letter dated 22 August 2014.

Accordingly, in the appendix to this decision, the Commission has imposed a **condition of licence** requiring the licensee to pay the CCD shortfall (\$135,617) by **31 August 2019** and to provide proof of payment and eligibility by **30 November 2019**.

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 leading to the non-compliance, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.
17. In the Commercial Radio Policy, the Commission stated that it is important that licensees make their required CCD contributions to eligible initiatives given that these initiatives not only help to develop and advance the careers of emerging Canadian artists in each year but also increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. Unpaid and ineligible CCD contributions cause harm to the broadcasting system.
18. Under its approach to non-compliance, the Commission may require the licensee to pay an additional CCD contribution equivalent to the amount of the shortfall, as well as repay any outstanding amount, as a remedial measure for the harm caused to the broadcasting system. As for the amount that would be appropriate to impose on the licensee as an additional contribution, the Commission may take into account factors including:
 - the nature, severity and recurrence of the non-compliance;
 - the circumstances surrounding the non-compliance, such as any demonstrated, legitimate attempt by the licensee to comply with its regulatory obligations;
 - the harm caused to the Canadian broadcasting system by the non-compliance;
 - whether and when any CCD shortfall has been repaid; and
 - the annual revenues of the licensee.

Commission's analysis

19. The \$135,617 CCD shortfall represents approximately half of the licensee's total CCD obligations (\$272,377) required up to the 2015-2016 broadcast year. The Commission notes that the shortfall is significant and that the non-compliance occurred over four broadcast years. Although this is the station's first instance of non-compliance, the Commission considers that this non-compliance is severe due to the considerable amounts at issue and that harm has been caused to the Canadian broadcasting system.

20. The Commission notes that it granted the broadcasting licence for CKYR-FM in Broadcasting Decision 2012-308 following a competitive process. As part of that competitive process, MBC proposed the levels of over-and-above CCD contributions to which it is now subject under condition of licence 6. The licensee's proposal regarding over-and-above CCD contributions was one of the elements that the Commission took into consideration in approving the application for a broadcasting licence to operate the station as part of this competitive licensing process. Under these circumstances, the Commission is of the view that the licensee's failure to prove that it has complied with the obligations that it proposed contributes to the severity of the non-compliance.
21. Further, the responsibilities of licensees as they relate to providing proof of payment and eligibility are set out and explained in the Bulletin and were communicated to the licensee in the Commission's letter dated 17 January 2018, which detailed all claimed expenses for which the necessary documentation had not been provided for the 2012-2013 through 2015-2016 broadcast years. Moreover, the licensee had a telephone discussion with Commission staff on 26 January 2018 and was informed that it must provide documentation demonstrating that the payments were made to an arm's-length third party, such as a letter from a third party that received the funds. Despite these communications, the licensee was unable to provide sufficient documentation to support the eligibility of a large number of the CCD initiatives reported from the 2012-2013 through 2015-2016 broadcast years. Given these circumstances, the Commission is concerned with the licensee's understanding of its regulatory requirements regarding the submission of documentation demonstrating the eligibility of CCD initiatives.
22. When questioned regarding the possible shortfall (estimated at \$265,986 at that time) and the imposition of an additional CCD contribution as a remedial measure to compensate for the loss incurred in the broadcasting system, the licensee did not agree to rectify the CCD shortfall or to make an additional CCD contribution. The licensee further claimed that the imposition of an additional CCD contribution (\$265,986) during a single broadcast year would cause severe financial distress on an independent ethnic radio station with limited revenues such as itself..
23. In this regard, although MBC claimed that CKYR-FM has limited revenues and that the imposition of an additional CCD contribution to be paid during a single broadcast year would cause financial distress, the Commission notes that CKYR-FM has shown a positive profit before interest and taxes margin since 2014, its second year of operation. Moreover, based on the station's financial performance, the Commission is of the view that the imposition of an additional CCD contribution of \$135,617 would represent a small portion of its annual revenues.
24. Considering the severity of the non-compliance and the financial health of the station and consistent with its approach to non-compliance by radio stations, the Commission is of the view that an additional CCD contribution of \$135,617 should be imposed in the station's next licence term. As mentioned above, funding for eligible initiatives supports the careers of emerging Canadian artists in each year and increases the

supply of and demand for high-quality Canadian music. In this case, payment of the additional contribution would be appropriate to address the harm caused to the Canadian broadcasting system due to the licensee's failure to meet its regulatory obligations relating to CCD over the current licence term. As such, in the appendix to this decision, the Commission has imposed a **condition of licence** requiring the licensee to make an additional CCD contribution of \$135,617 by no later than 31 August 2019 in order to remedy the loss to the broadcasting system.

Request regarding the allocation of basic CCD contributions

25. In its renewal application, the licensee requested an exception to section 15(5)(a) of the Regulations, which requires licensees to direct at least 15% of their required annual basic CCD contribution to the Community Radio Fund of Canada. MBC asked that it be authorized to allocate all of its annual basic CCD contribution to discretionary initiatives.
26. The Commission's standard practice is to deny requests seeking amendments to conditions of licence or exceptions to the Regulations when the licensee is in a situation of non-compliance of direct relation to the request. In light of the licensee's severe non-compliance with respect to its CCD contributions, the Commission is of the view that it would be inappropriate to approve MBC's request.
27. Accordingly, the Commission **denies** the licensee's request.

Outstanding CCD payments

28. To fulfill its outstanding commitments to CCD set out in Broadcasting Decision 2012-308, in addition to the required basic annual contribution to CCD, the CCD shortfall (\$135,617) and the additional CCD (\$135,617) set out in this decision, the licensee shall make a CCD contribution of:
 - \$79,000 in the 2018-2019 broadcast year (by no later than 31 August 2019), which represents the amount owing for the final year of the original seven-year CCD commitment of \$553,000; and
 - \$52,667 in the 2019-2020 broadcast year (by no later than 31 August 2020), which represents the remaining portion of the partial 2012-2013 first year of operation.
29. **Conditions of licence** to that effect are set out in the appendix to this decision.

Conclusion

30. In light of all the above, the Commission **renews** the broadcasting licence for the ethnic radio programming undertaking CKYR-FM Calgary, Alberta from 1 September 2018 to 31 August 2025. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminders

31. 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 also increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. Unpaid and ineligible CCD contributions cause harm to the broadcasting system.
32. It is incumbent upon licensees to provide, by the required deadlines, proof of payment to such initiatives. Licensees must also provide sufficient documentation to support the eligibility of their contributions. Failure to do so may result in the Commission finding a contribution ineligible, which in turn may affect a station's compliance with regulatory obligations.
33. Should the licensee continue to be in non-compliance with its 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.
34. Pursuant to section 22 of the *Broadcasting Act*, the broadcasting licence renewed in this decision will cease to have any force or effect should the broadcasting certificate issued by the Department of Industry lapse.

Secretary General

Related documents

- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Licensing of new radio stations to serve Calgary, Alberta*, Broadcasting Decision CRTC 2012-308, 24 May 2012
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *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 2018-328

Terms, conditions of licence, expectation and encouragement for the ethnic radio programming undertaking CKYR-FM Calgary, Alberta

Terms

The licence will expire 31 August 2025.

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. The licensee shall devote all of the programming broadcast in each broadcast week to ethnic programs, as defined in the *Radio Regulations, 1986*.
3. The licensee shall devote at least 90% of the programming broadcast in each broadcast week to third-language programs, as defined in the *Radio Regulations, 1986*.
4. The licensee shall offer on a weekly basis programming directed to at least 23 cultural groups in at least 19 languages.
5. In each broadcast week, the licensee shall devote at least 10% of the musical selections from content category 3 (Special Interest Music) broadcast during ethnic programming periods to Canadian selections.
6. To fulfill its outstanding commitments to Canadian content development (CCD) set out in Appendix 2 to *Licensing of new radio stations to serve Calgary, Alberta*, Broadcasting Decision CRTC 2012-308, 24 May 2012, in addition to the required basic annual contribution to CCD set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time, the licensee shall make a CCD contribution of \$79,000 in the 2018-2019 broadcast year by no later than 31 August 2019.

This CCD contribution 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.

The licensee shall file all proof of payment and eligibility regarding this CCD contribution by 30 November 2019 and shall do so in a form deemed acceptable by the Commission.

7. In addition to the required basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time, and the CCD contributions set out in condition of licence 6 above, the licensee

shall make a CCD contribution of \$135,617 in the 2018-2019 broadcast year (by no later than 31 August 2019) to fulfill the outstanding shortfall from the previous licence term identified in this decision.

This CCD contribution 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.

The licensee shall file all proof of payment and eligibility regarding this CCD contribution by 30 November 2019 and shall do so in a form deemed acceptable by the Commission.

8. In addition to the required basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time, and the CCD contributions set out in conditions of licence 6 and 7 above, the licensee shall make a CCD contribution of \$135,617 in the 2018-2019 broadcast year (by no later than 31 August 2019) to remedy the harm caused to the Canadian broadcasting system resulting from the licensee's non-compliance with its regulatory obligations relating to CCD from the previous licence term identified in this decision.

The licensee shall allocate at least 15% (\$20,343) of this CCD contribution to the Community Radio Fund of Canada. The remaining amounts 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.

The licensee shall file all proof of payment and eligibility regarding this CCD contribution by 30 November 2019 and shall do so in a form deemed acceptable by the Commission.

9. To fulfill its outstanding commitments to Canadian content development (CCD) set out in Appendix 2 to *Licensing of new radio stations to serve Calgary, Alberta*, Broadcasting Decision CRTC 2012-308, 24 May 2012, in addition to the required basic annual contributions to CCD set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time, the licensee shall make a CCD payment of \$52,667 in the 2019-2020 broadcast year by no later than 31 August 2020.

These CCD contributions 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.

The licensee shall file all proof of payment and eligibility regarding these CCD contributions by 30 November 2020 and shall do so in a form deemed acceptable by the Commission.

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.