



## Broadcasting Decision CRTC 2018-427

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References: 2018-128 and 2018-128-1

Ottawa, 20 November 2018

### **Chimnissing Communications**

Christian Island, Ontario

*Public record for this application: 2017-0851-2*

*Public hearing in the National Capital Region*

*19 June 2018*

### **CKUN-FM Christian Island – Licence renewal**

*The Commission **renews** the broadcasting licence for the (Indigenous Type B Native) radio station CKUN-FM Christian Island from 1 January 2019 to 31 August 2021. This short-term licence renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.*

#### **Application**

1. Chimnissing Communications (Chimnissing) filed an application to renew the broadcasting licence for the (Indigenous Type B Native) radio station CKUN-FM Christian Island, Ontario, which expires 31 December 2018.<sup>1</sup> The Commission received interventions supporting this application.

#### **Background**

2. In Broadcasting Decision 2015-277, the Commission renewed the broadcasting licence for CKUN-FM for a short-term period due to the licensee's non-compliance with sections 9(2) and 9(4)(b) of the *Radio Regulations, 1986* (the Regulations) relating to the filing of annual returns and responding to Commission requests for information.

#### **Non-compliance**

3. In Broadcasting Notice of Consultation 2018-128 (the Notice), the Commission stated that the licensee was in apparent non-compliance with the following sections of the Regulations in the current licence term:

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<sup>1</sup> The licence for CKUN-FM was renewed administratively from 1 September to 31 December 2018 in Broadcasting Decision 2018-244.

- sections 8(1), 8(2), 8(3), 8(4), 8(5), 8(6) and 9(3)(b) relating to the retention and filing of complete and accurate radio monitoring materials for the broadcast week of 16-22 October 2016;
  - section 9(2) relating to the filing of annual returns for the 2015-2016 and 2016-2017 broadcast years; and
  - section 16(3) relating to the implementation of the National Public Alerting System (NPAS).
4. In the Notice, the Commission called Chimnissing to a public hearing to consider the licence renewal application and address its apparent non-compliance with the above-noted sections of the Regulations. The Commission stated that Chimnissing was expected to show cause why the Commission should not impose mandatory orders requiring it to comply with the Regulations and why the Commission should not suspend or revoke CKUN-FM's licence pursuant to sections 9 and 24 of the *Broadcasting Act* (the Act).

#### **Filing of monitoring materials**

5. Sections 8(1), 8(2), 8(3), 8(4), 8(5), 8(6) and 9(3)(b) of the Regulations set out requirements relating to the retention and filing upon Commission request of complete and accurate radio monitoring materials, including program logs, audio recordings and music lists.
6. In a letter of 27 October 2016, the licensee was asked to submit its program logs, audio recordings and music lists for the broadcast week of 16-22 October 2016. The station manager at the time, Guy Monague, informed the Commission by email on 1 November and 15 November 2016 that advance notice was needed to prepare the recordings. The licensee was ultimately unable to provide the required monitoring materials.
7. In a letter of 8 November 2017, the Commission asked the licensee to comment on this apparent non-compliance. On 6 December 2017, the current station manager, Vanessa Monague, replied that she had assumed her position in May 2017 and was unaware of the initial request for radio monitoring materials in 2016. She indicated that the personnel at the station at that time did not possess any computer skills.
8. In light of the above, the Commission finds the licensee in non-compliance with sections 8(1), 8(2), 8(3), 8(4), 8(5), 8(6) and 9(3)(b) of the Regulations.

#### **Filing of annual returns**

9. Section 9(2) of the Regulations requires radio station licensees to file annual returns with the Commission by 30 November of each year for the broadcast year ending on the previous 31 August. The specific filing requirements are detailed in Broadcasting Information Bulletin 2011-795.

10. Further, as of 2015 these annual returns must include Form 1411 – Emergency Alert Implementation Report (the NPAS form) regarding the steps taken to ensure compliance with the alerting requirements set out in Broadcasting Regulatory Policy 2014-444.
11. In Commission letters dated 8 November 2017 and 15 March 2018, the licensee was informed that its annual returns for the 2015-2016 and 2016-2017 broadcast years, including financial statements and the NPAS forms, were not filed.
12. In response to these letters, Ms. Monague filed financial statements for both broadcast years and explained that at the time she began working as station manager she thought that all documents had been submitted.
13. Commission staff determined that the submitted financial statements were not adequately completed and did not reflect existing accounting standards and methods. Further, the annual returns and NPAS forms were still missing. The licensee was questioned about this matter at the hearing. Specifically, the Commission questioned the licensee with respect to its understanding of the information that is expected to be provided as part of the annual returns. By way of undertaking, the licensee committed to filing its complete annual returns.
14. The licensee submitted its complete annual returns, including financial statements, on 5 July 2018 and its NPAS forms on 26 June 2018. As a result, the licensee filed its annual return for the 2015-2016 broadcast year over 12 months late and its annual return for the 2016-2017 broadcast year over 7 months late.
15. In light of the above, the Commission finds the licensee in non-compliance with section 9(2) of the Regulations for the 2015-2016 and 2016-2017 broadcast years.

### **Implementation of the NPAS**

16. Section 16(3) of the Regulations requires all licensees of campus, community and native stations to implement a public alerting system by 31 March 2016. Further, section 9(4) of the Regulations requires licensees to respond to any Commission request for information regarding their adherence to regulatory requirements.
17. In a Commission letter of 8 November 2017, the licensee was asked to confirm whether an operational public alerting system was installed, along with its implementation date. The licensee was also asked to comment on the circumstances surrounding its non-compliance if the NPAS was not implemented.
18. In a reply letter of 6 December 2017, Ms. Monague stated that she had understood that the alerting system equipment was functional, but realized after she received the Commission's letter addressing this matter in that it was broken and in need of replacement.
19. At the hearing, the licensee confirmed that a new alerting system was installed and functional as of June 2018.

20. The licensee was questioned at the hearing with respect to whether an initial NPAS had been implemented by the required deadline of 31 March 2016. Because the licensee was unable to provide the implementation date at the hearing, the licensee was asked to provide this information by 26 June 2018 by way of undertaking. The licensee did not comply with this undertaking as it did not confirm when or whether an NPAS was implemented by the required deadline.
21. The NPAS forms filed by the licensee show that the system was not functional in the 2015-2016 and 2016-2017 broadcast years.
22. In light of the above, the Commission finds that the licensee did not demonstrate that the NPAS was implemented by the required deadline of 31 March 2016. Accordingly, the Commission finds the licensee in non-compliance with section 16(3) of the Regulations relating to the implementation of the NPAS.
23. In addition, the Commission finds that the licensee failed to comply with the undertaking to provide the implementation date of the NPAS. Accordingly, the Commission finds the licensee in non-compliance with section 9(4) of the Regulations with respect to the requirement to respond to Commission requests for information.

### **Regulatory measures**

24. 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.
25. The Commission also specified in the bulletin that it may apply certain measures on a case-by-case basis depending on the nature of the non-compliance, including the imposition of conditions of licence or mandatory orders, short-term licence renewal or the non-renewal, suspension or revocation of the licence.
26. In this case, this is the second consecutive licence term in which the licensee has been found in non-compliance with regulatory requirements relating to the filing of annual returns and responding to Commission request for information. At the hearing, the licensee stated that the following measures had been put in place to ensure compliance going forward:
  - Douglas Bingley, who appeared at the hearing as a broadcast consultant for Chimnissing, will be assisting the station manager and the finance manager (working permanently in the Band Council) to make sure that the annual returns and other statistical information will be filed properly with the Commission for the next two broadcast years;

- Mr. Bingley has created a guide to Commission requirements, which the station manager has distributed to the board of directors and station staff;
  - the station has designated a secondary contact for CRTC correspondence;
  - the current station manager, Ms. Monague, will ensure that corporate knowledge is passed on to new personnel by creating a document specifying the information she has learned in her position for her successor should her contract end in May 2019; and
  - the station manager plans to meet with the board of directors on a quarterly basis to ensure compliance with the licensee's regulatory obligations.
27. With respect to the licensee's obligations relating to the retention and filing of monitoring materials, Ms. Monague indicated at the hearing that the station had purchased and installed a new program logging system and that its personnel had been trained on how to extract and submit the required files. Ms. Monague added that she understood the regulatory requirements regarding the retention and submission of radio monitoring materials and that the Commission can request monitoring materials without advance notice.
28. Although the Commission is concerned with the serious and repeated nature of the licensee's non-compliance, it is satisfied with the measures taken by the licensee to ensure future compliance.
29. In light of all the above, the Commission **renews** the broadcasting licence for the Indigenous (Type B Native) radio programming undertaking CKUN-FM Christian Island from 1 January 2019 to 31 August 2021. This short-term licence renewal will allow for an earlier review of the licensee's compliance with regulatory requirements. The **conditions of licence** are set out in the appendix to this decision.

### **Other issue**

30. In a letter of 8 November 2017, the licensee was required to file an executed copy of the station's most recent bylaws in order to allow the Commission to determine who exercises effective control of CKUN-FM. The licensee filed the bylaws on 10 January 2018, but they were not executed.
31. Consequently, the Commission requires the licensee to file a copy of its executed bylaws by **20 December 2018**.

### **Reminders**

32. The licensee must comply at all times with the requirements set out in the Act, the Regulations and its conditions of licence.

33. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. The submission of complete and accurate audio recordings, program logs 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 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 or does not file such material affects the ability of the Commission to adequately perform its duty to independently confirm the licensee's adherence to regulatory requirements. These filings also become important indicators of whether the licensee has the willingness, ability and knowledge necessary to operate the station in a compliant manner.
34. The timely filing of complete annual returns is an important regulatory obligation that is necessary for the Commission to review a licensee's compliance. These returns are also key components of the Commission's ongoing monitoring plan and contribute to an authoritative source of statistics on the Canadian broadcasting industry for use by all stakeholders. Therefore, the timely filing of complete annual returns not only allows the Commission to effectively monitor a licensee's performance and compliance with various regulations and obligations, but also enables the Commission to effectively assess, supervise and regulate the radio broadcasting sector as a whole. Licensees are responsible for filing complete annual returns on time, including the financial statements. As set out in Broadcasting Information Bulletin 2011-795, it is the licensee's responsibility to ensure that all appropriate forms and documentation are included with its annual returns and to contact the Commission if further clarification is required.
35. The full participation of the broadcasting industry is important for the NPAS to be effective in safeguarding and warning Canadians. Participation in the NPAS ensures that radio stations across Canada notify listeners of alert messages issued by Emergency Management Officials for imminent emergencies, including tornados, floods, forest fires, industrial disasters, tsunamis and other threats to life. As such, the Commission considers that compliance must be enforced, and station compliance will be closely monitored. The Commission could choose to apply other regulatory measures, such as those set out in Broadcasting Information Bulletin 2014-608, should the requirements with respect to the NPAS not be fulfilled.
36. Should the licensee again breach regulatory requirements, the Commission may consider, among other measures, the suspension, non-renewal or revocation of the broadcasting licence under sections 9 and 24 of the Act.
37. 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**

- *Administrative renewals*, Broadcasting Decision CRTC 2018-244, 16 July 2018
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2018-128, 18 April 2018
- *CKUN-FM Christian Island – Licence renewal*, Broadcasting Decision CRTC 2015-277, 23 June 2015
- *Update on the Commission’s approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444, 29 August 2014
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011

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

## **Appendix to Broadcasting Decision CRTC 2018-427**

### **Terms, conditions of licence and encouragement for the Type B Native radio programming undertaking CKUN-FM Christian Island, Ontario**

#### **Terms**

The licence will expire 31 August 2021.

#### **Conditions of licence**

1. In each broadcast week, the licensee shall devote at least 35% of its musical selections from content category 2 (Popular Music) to Canadian musical selections broadcast in their entirety.

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

2. If the licensee originates 42 or more hours of programming in any broadcast week, the licensee shall adhere to the Canadian Association of Broadcasters’ *Equitable Portrayal Code*, as amended from time to time and approved by the Commission, as well as to the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

#### **Encouragement**

Where the licensee carries wraparound programming, the Commission encourages it to use programming from another Aboriginal station or network with a focus on additional Aboriginal-language programming (Cree/Dene/Chipewyan) or current Aboriginal music.