



Broadcasting Decision CRTC 2018-444 and Broadcasting Order CRTC 2018-445

PDF version

References: 2018-128 and 2018-128-1

Ottawa, 30 November 2018

Wired World Inc.
Kitchener, Ontario

*Public record for this application: 2017-0573-2
Public hearing in the National Capital Region
19 June 2018*

CKWR-FM Kitchener – Licence renewal and issuance of mandatory order

*The Commission **renews** the broadcasting licence for the English-language community radio station CKWR-FM Kitchener, Ontario from 1 January 2019 to 31 August 2020. This short-term licence renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.*

Further, the Commission issues a mandatory order requiring Wired World Inc. to ensure that CKWR-FM complies at all times with section 9(2) of the Radio Regulations, 1986.

Background

1. In Broadcasting Decision 2008-300, the Commission renewed the broadcasting licence for the English-language community radio station CKWR-FM Kitchener for a short term, until 31 August 2012, due to non-compliance by the licensee, Wired World Inc. (Wired World), with section 9(2) of the *Radio Regulations, 1986* (the Regulations) relating to the provision of annual returns, for the 2000-2001, 2001-2002 and 2003-2004 broadcast years.
2. In Broadcasting Decision 2013-454, the Commission once again renewed the broadcasting licence for CKWR-FM for a short term, until 31 August 2018, due to the licensee's non-compliance with section 9(2) of the Regulations for the 2008-2009 and 2009-2010 broadcast years.

Application

3. Wired World filed an application to renew the broadcasting licence for CKWR-FM, which expires on 31 December 2018.¹
4. Wired World is a not-for-profit corporation that is effectively controlled by its board of directors.
5. The Commission received an intervention in support of this application from the National Campus and Community Radio Association (NCRA), as well as an intervention filed by the licensee that contained letters in support from various members of the community served by CKWR-FM.

Non-compliance

6. In Broadcasting Notice of Consultation 2018-128 (the Notice), the Commission stated that the licensee was in apparent non-compliance with the following regulatory requirements during the current licence term:
 - section 9(2) of the Regulations relating to the filing of annual returns for CKWR-FM by no later than 30 November of each year for the 2015-2016 and 2016-2017 broadcast years;
 - CKWR-FM's condition of licence relating to the broadcast of Canadian musical selections during ethnic programming periods for the broadcast week of 16 to 22 October 2016; and
 - section 16(3) of the Regulations relating to the implementation of the National Public Alerting System (NPAS).
7. In the Notice, the Commission called Wired World to appear at the 19 June 2018² public hearing in Gatineau, Quebec to address its serious and in some cases repeated instances of apparent non-compliance. At that hearing, Wired World was to show cause why the Commission should renew the broadcasting licence for CKWR-FM, why the Commission should not impose mandatory orders requiring it to comply with its regulatory obligations and why the Commission should not suspend or revoke CKWR-FM's licence pursuant to sections 9 and 24 of the *Broadcasting Act* (the Act).

Filing of annual returns

8. Section 9(2) of the Regulations requires radio station licensees to file annual returns, including financial statements, by 30 November of each year for the broadcast year

¹ In Broadcasting Decision 2018-244, the broadcasting licence for CKWR-FM was administratively renewed from 1 September 2018 to 31 December 2018.

² In Broadcasting Notice of Consultation 2018-128-1, the Commission announced that the hearing date was changed from 18 to 19 June 2018.

ending the previous 31 August. The specific filing requirements, including those relating to financial statements, are set out in Broadcasting Information Bulletin 2011-795.

9. Further, since 2015, annual returns must include Form 1411 – Emergency Alert Implementation Report (the NPAS form) regarding the steps taken to ensure compliance with alerting requirements set out in Broadcasting Regulatory Policy 2014-444.
10. According to Commission records, the financial statements that were to be included with the station’s annual return for the 2015-2016 broadcast year were filed 13 December 2017, more than a full year after the prescribed 30 November 2016 deadline. Also, the NPAS form for that broadcast year was filed 4 December 2017, more than a year after the prescribed 30 November 2016 deadline. Further, the financial statements that were to be included with the station’s annual return for the 2016-2017 broadcast year were filed 29 March 2018, almost four months after the prescribed 30 November 2017 deadline.
11. In regard to the annual return for the 2015-2016 broadcast year, Wired World explained that the station’s bookkeeper, who left the station suddenly, lacked the appropriate qualifications for the position. It also cited management issues on the part of the President of its board of directors, who stepped down from the role on 16 March 2018. In regard to the annual return for the 2016-2017 broadcast year, the licensee stated that the late filing of financial statements was due to an oversight by its new bookkeeper and its new accountant, and a lack of follow through by its board of directors and other station personnel.
12. Wired World indicated that, to address the situation, its board of directors has appointed a board compliance officer, who will supervise the bookkeeper’s filing of annual returns for the station, as well as a station manager, who will ensure that any and all regulatory issues are addressed. It further indicated that the station’s financial statements will be prepared by a chartered accountant. In addition, job descriptions for all board members, officers and staff are being updated or prepared to ensure clarity in regard to each person’s role. Finally, the licensee indicated that it is taking steps to be proactive in fulfilling its regulatory obligations, and is building in redundancy and oversight procedures to prevent further issues.
13. 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.

Broadcast of Canadian music during ethnic programming periods

14. CKWR-FM is subject to the following condition of licence set out in Appendix 14 to Broadcasting Decision 2013-454:
 2. The licensee shall broadcast, during ethnic programming periods, a minimum level of 10% Canadian musical selections.

15. According to Commission records, for the broadcast week of 16 to 22 October 2016, only 3.3% of the musical selections broadcast during ethnic programming periods were Canadian selections, which is below the 10% minimum.
16. Wired World attributed this non-compliance in part to its board of directors' lack of understanding of the requirements relating to the broadcast of Canadian content set out in the Regulations and the station's conditions of licence. It also noted the failure by station staff to distribute correspondence received from the Commission, a lack of internal auditing and enforcement of Canadian content compliance by the program director, and a lack of oversight by the board of directors in regard to monitoring and enforcement. The licensee also cited an internal culture at the station that reinforced the belief that regulatory compliance was not important.
17. Wired World added that various programming changes were necessary to ensure the station's continued operation, and that information from members of its programming staff was slow in being received. It also noted that a server failure in December 2016 resulted in much of its music information being lost or corrupted, and that it has been slowly building back that base of information with back-ups and additional information.
18. Wired World indicated that, to address the situation, CKWR-FM's program director sent the station's programmers and staff a letter outlining the details of its Canadian content obligations, which were derived from the Commission's website and the NCRA regulatory guide. Programmers and staff were also required to sign a follow up letter to confirm their understanding of the station's policies and their agreement to abide by those policies. According to the licensee, its programmers now understand, among other things, the difference between content category 2 (Popular Music) and content category 3 (Special Interest Music) musical selections, the percentages of each type of music that must be broadcast each week, and the Commission's MAPL system, which assists in determining whether a musical selection qualifies as a Canadian selection.³ Wired World added that its policy manual will contain a document to help ensure CKWR-FM's compliance with its Canadian content obligations.
19. In addition, the licensee indicated that for ethnic programming periods, it will implement an internal 12% Canadian content level, to be calculated per show, to which programmers will be required to adhere. Any programmers who fall below this threshold will be reprimanded and may be required to pre-record their shows for review by the licensee for compliance prior to broadcast.
20. To further ensure that the station does not fall short of the minimum regulatory requirements, the licensee will be raising CKWR-FM's internal Canadian content requirements such that 37.5% of all content category 2 musical selections and 15% of

³ See Broadcasting Regulatory Policy 2014-554.

all content category 3 musical selections broadcast during non-ethnic programming periods are Canadian.

21. Finally, Wired World indicated that the conversion of its logging system from paper to electronic will allow it to more readily access the station's logs as well as monitor every show that is being aired on a weekly basis, thereby helping ensure the station's compliance.
22. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to the broadcast of Canadian musical selections during ethnic programming periods for the broadcast week of 16 to 22 October 2016.

Implementation of the National Public Alerting System

23. Pursuant to section 16(3) of the Regulations, licensees of community radio stations were required to implement a public alerting system by 31 March 2016. In regard to the present case, in response to a Commission letter dated 9 March 2018, Wired World confirmed that the NPAS was implemented on CKWR-FM during the week of 26 March 2017, almost one year after the prescribed deadline of 31 March 2016.
24. Wired World stated that its President, its Vice-President and its previous bookkeeper were aware of the station's obligations relating to implementing the NPAS, but did not properly inform the board of directors or take the necessary steps to raise the funds to pay for the NPAS equipment. In its view, the non-compliance was therefore due to the lack of oversight of those individuals as the information regarding the NPAS requirement was not passed along to the appropriate people. As a consequence of the above, the organization was not made aware of the requirement for the alerting system until approximately two years following the Commission's announcement in Broadcasting Regulatory Policy 2014-444 requiring broadcasters in Canada to fully participate in the NPAS. The licensee also indicated that once this lack of oversight became clear to the board of directors, the President and Vice-President were asked to step down from their positions, and its former bookkeeper was fired.
25. Wired World added that it did not have cash on hand to purchase the NPAS equipment given that it did not regularly conduct annual fundraising, and given that its advertising revenues have been on a slow decline for years. It stated, however, that it has implemented funding drives in order to maintain a contingency fund to help address unexpected emergencies and regulatory compliance issues that may arise. The licensee also stated that the above-noted newly appointed compliance officer will be responsible for implementing deadlines and adding regulatory issues to the agenda for all board meetings.
26. In light of the above, the Commission finds the licensee in non-compliance with section 16(3) of the Regulations.

Regulatory measures

27. 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. In that information bulletin, the Commission also noted that depending on the nature of the non-compliance, and on a case-by-case basis, it may apply measures including a short-term licence renewal, the imposition of conditions of licence or mandatory orders, or the non-renewal, suspension or revocation of the licence.
28. The Commission acknowledges the measures put in place by the licensee to avoid any future non-compliance in regard to the filing of complete annual returns and the broadcast of Canadian musical selections during ethnic programming periods. In regard to the NPAS, the Commission notes that the system has been operational on the station since March 2017. Nevertheless, this is the third consecutive licence term in which the licensee has been found in non-compliance with regulatory requirements relating to the filing of annual returns. Further, the Commission considers all of the above instances of non-compliance to be serious matters. Consequently, the Commission finds that it is appropriate to grant the licensee a short-term renewal for CKWR-FM until 31 August 2020. This short-term licence renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.
29. Further, given the nature of the various, and in some cases repeated, instances of non-compliance, and given that this is the third consecutive licence term during which this station has been in non-compliance, the Commission finds it appropriate to require CKWR-FM to broadcast an on-air announcement regarding its non-compliance three times a day for five consecutive business days within the 15- to 30-day period following the beginning of the new licence term (i.e., from 16 to 31 January 2019). To confirm compliance with this requirement, the licensee must file with the Commission the audio recordings for the broadcast days during which the announcement was broadcast, as well as a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CKWR-FM Kitchener*, which can be found 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.

Potential imposition of a condition of licence stemming from non-compliance relating to Canadian content requirements

30. 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 artists of airplay and royalties. Furthermore, Canadian music listeners were deprived of the opportunity to listen to Canadian music, which runs counter to the objectives of

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

31. In Broadcasting Regulatory Policy 2014-554, in regard to non-compliance with requirements 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. However, as specified in the Regulations, basic CCD contribution requirements do not apply to community radio stations. Further, CKWR-FM does not have a condition of licence requiring CCD contributions. As such, should the above measure be implemented, it would be the first time that CKWR-FM is subject to a requirement to make such a contribution.
32. When questioned on the possibility of imposing a CCD requirement of \$1,000, to be directed to FACTOR or MUSICACTION, to compensate for the harm caused to the broadcasting system by the non-compliance, Wired World stated that it would accept such a condition of licence but preferred that the contribution be directed to the Community Radio Fund of Canada.
33. The Commission notes that this is Wired World's first instance of non-compliance with CKWR-FM's condition of licence relating to the broadcast of Canadian musical selections during ethnic programming periods, and that the licensee has met its other programming requirements relating to the broadcast of Canadian content during non-ethnic programming periods for the broadcast week in question. Further, the Commission is satisfied with the measures put into place by the licensee to ensure future compliance with its Canadian content requirements. In light of the above, and given that community radio stations are not subject to CCD requirements through the Regulations, the Commission does not consider it necessary to impose a condition of licence requiring Wired World to make a CCD contribution in regard to CKWR-FM's non-compliance with its condition of licence relating to the broadcast of Canadian content during ethnic programming periods.

Conclusion

34. In light of all the above, the Commission **renews** the broadcasting licence for the English-language community radio programming undertaking CKWR-FM Kitchener from 1 January 2019 to 31 August 2020. The licensee shall adhere to the **conditions of licence** set out in Appendix 1 to this decision.
35. In addition, pursuant to section 12(2) of the Act, the Commission issues a mandatory order requiring Wired World to ensure that CKWR-FM complies at all times with section 9(2) of the Regulations relating to the filing of annual returns. The mandatory order requiring compliance with the above-noted section of the Regulations is set out in Appendix 3 to this decision.

36. Should the licensee again breach regulatory requirements, including the mandatory order, 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.

Reminders

37. The Commission reminds the licensee that it must comply at all times with the requirements set out in the Act, the Regulations and its conditions of licence.
38. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. Annual returns are key components for the Commission's ongoing monitoring plan and contribute to an authoritative source of statistics on the Canadian broadcasting industry for all stakeholders. In addition, annual returns allow the Commission to effectively assess, supervise, and regulate the radio broadcasting industry as a whole. They also allow the Commission to monitor a licensee's performance and compliance with regulatory requirements. The timely filing of complete annual returns is therefore an important regulatory obligation.
39. Licensees are responsible for filing complete annual returns on time, including 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. Licensees that do not file annual returns or requested material in a timely manner, file incomplete material, or do not file such material at all therefore affect the Commission's ability 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 a licensee has the willingness, ability and necessary knowledge to bring itself into compliance and maintain such compliance. Accordingly, the Commission views such non-compliance as very serious.
40. 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 authorized officials for imminent emergencies, including events such as tornadoes, floods, forest fires, industrial disasters, tsunamis and other imminent or unfolding events posing a danger 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 relating to the NPAS not be fulfilled.
41. 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, as amended by Broadcasting Notice of Consultation CRTC 2018-128-1, 15 May 2018
- *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
- *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
- *Campus and community radio programming undertakings – Licence renewals*, Broadcasting Decision CRTC 2013-454, 29 August 2013
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *CKWR-FM Kitchener – Licence renewal*, Broadcasting Decision CRTC 2008-300, 5 November 2008

This decision is to be appended to the licence.

Appendix 1 to Broadcasting Decision CRTC 2018-444

Terms, conditions of licence, expectations and encouragement for the English-language community radio programming undertaking CKWR-FM Kitchener, Ontario

Terms

The licence will take effect 1 January 2019 and expire 31 August 2020.

Conditions of licence

1. The licensee shall adhere to the conditions set out in *Standard conditions of licence for campus and community radio stations*, Broadcasting Regulatory Policy CRTC 2012-304, 22 May 2012, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. In each broadcast week, the licensee shall devote at least 10% of all musical selections broadcast during ethnic programming periods to Canadian selections.
3. The licensee shall devote 23 hours of its programming broadcast each broadcast week to ethnic programs, as defined in the *Radio Regulations, 1986*.
4. The licensee shall devote at least 19 hours of its programming broadcast each broadcast week to third-language programs, as defined in the *Radio Regulations, 1986*.
5. In each broadcast week, the licensee shall provide programming directed to a minimum of 8 distinct ethnic groups in at least 6 different languages.
6. In regard to the licensee's non-compliance with regulatory requirements:
 - a) The licensee shall broadcast the following announcement three times a day, 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 business days within the 15- to 30-day period immediately following the commencement of the new licence term (i.e., the period from 16 January 2019 to 31 January 2019):

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 2018-444, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986*. The instances of non-compliance occurred during the 2015-2016 and 2016-2017 broadcast years and are a recurring issue. CKWR-FM has put measures in place to ensure that the non-compliances 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 CKWR-FM Kitchener*, set out in Appendix 2 to *CKWR-FM Kitchener – Licence renewal and issuance of mandatory order*, Broadcasting Decision CRTC 2018-444, 30 November 2018, 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,” “ethnic programming period” and “musical selection” shall have the same meanings as those set out in the *Radio Regulations, 1986*.

Expectations

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

As set out in *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010, the Commission expects all community and campus radio station licensees to file yearly updates on the composition of their board of directors. These annual updates can be submitted at the time of submission of annual returns, following annual board of directors’ elections or at any other time. As noted in Appendix 3 to that regulatory policy, licensees may submit such information through the Commission’s website.

Encouragement

The Commission considers that community radio stations should be particularly sensitive to employment equity issues in order to reflect fully the communities they serve. It encourages the licensee to consider these issues in its hiring practices and in all other aspects of its management of human resources.

Appendix 2 to Broadcasting Decision CRTC 2018-444

Attestation as to the broadcast of the non-compliance announcement on CKWR-FM Kitchener

In regard to the requirements set out in condition of licence 6 in Appendix 1 to *CKWR-FM Kitchener – Licence renewal and issuance of mandatory order*, Broadcasting Decision CRTC 2018-444, 30 November 2018, I _____ (NAME) on behalf of _____ (LICENSEE), certify that the announcement regarding CKWR-FM Kitchener'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 business days within the 15- to 30-day period immediately following the beginning of the new licence term (i.e., the period from 16 to 31 January 2019), as follows:

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

Signature

Date

Appendix 3 to Broadcasting Decision CRTC 2018-444

Broadcasting Mandatory Order CRTC 2018-445

Pursuant to section 12(2) of the *Broadcasting Act*, the Commission hereby orders Wired World Inc., licensee of the community radio programming undertaking CKWR-FM Kitchener, to comply at all times during the term of the licence granted in *CKWR-FM Kitchener – Licence renewal and issuance of mandatory order*, Broadcasting Decision CRTC 2018-444, 30 November 2018, with the requirement set out in section 9(2) of the *Radio Regulations, 1986*, which reads as follows:

9(2) On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous August 31.