



## Broadcasting Decision CRTC 2019-271

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Reference: Part 1 licence renewal application posted on 28 February 2019

Ottawa, 31 July 2019

**Vista Radio Ltd.**  
Espanola, Ontario

*Public record for these applications: 2018-0586-3 and 2018-0597-0*

### **CJJM-FM Espanola – Licence renewal and amendments**

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CJJM-FM Espanola from 1 September 2019 to 31 August 2026.*

*The Commission **approves** Vista Radio Ltd.'s (Vista) application to amend the broadcasting licence for CJJM-FM to delete its over-and-above Canadian content development condition of licence.*

*The Commission **denies** Vista's application to amend the broadcasting licence for CJJM-FM to delete its condition of licence requiring that the station broadcast 10 hours of content category 3 (Special Interest Music) musical selections each broadcast week.*

#### **Application**

1. Vista Radio Ltd. (Vista) filed an application (2018-0586-3) to renew the broadcasting licence for the English-language commercial radio station CJJM-FM Espanola, Ontario, which expires 31 August 2019.
2. Vista also filed an application (2018-0597-0) to amend the broadcasting licence for CJJM-FM to delete its over-and-above Canadian content development (CCD) condition of licence, as well as its condition of licence requiring that the station broadcast 10 hours of content category 3 (Special Interest Music) musical selections each broadcast week, set out in Broadcasting Decision 2012-577.
3. The Commission did not receive any interventions regarding these applications.

#### **Non-compliance**

##### **Category 3 musical selections**

4. As set out in condition of licence 10 of Appendix 2 to Broadcasting Decision 2012-577, Vista must broadcast at least 10 hours of musical selections drawn from content category 3 (Special Interest Music) each broadcast week on CJJM-FM.

5. According to Commission records, the licensee did not meet this commitment during the broadcast week of 15 to 21 October 2017.
6. Vista acknowledged that it had not met this condition of licence and corrected the problem by immediately increasing the amount of musical selections aired from content category 3.
7. Given the above, the Commission finds the licensee in non-compliance with condition of licence 10.

### **Over-and-above Canadian content development contributions**

8. Condition of licence 11 set out in Appendix 2 to Broadcasting Decision 2012-577 states that, in addition to the basic annual contribution, the licensee shall contribute a minimum of \$800 annually to the promotion and development of Canadian content. Of this amount, \$200 shall be allocated to FACTOR. The remaining \$600 per year shall be allocated to local initiatives and to funding for local musicians.
9. According to Commission records, the licensee did not make its over-and-above contribution to CCD in each of the 2015-2016, 2016-2017 and 2017-2018 broadcast years, resulting in a \$2,400 shortfall.
10. Vista confirmed that it had inadvertently failed to pay its over-and-above contribution to CCD in each of the aforementioned broadcast years and stated that going forward, it will double-check its obligations and payments before the end of each fiscal year for all stations.
11. In light of the foregoing, the Commission finds the licensee in non-compliance with its condition of licence 11 in each of the 2015-2016, 2016-2017 and 2017-2018 broadcast years.

### **Regulatory measures**

12. The Commission's approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2014-608. Under this 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 in question, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.
13. In response to a letter from Commission staff, Vista indicated that it erroneously included the spoken word programming and advertising broadcast in its calculation of the broadcast time of its category 3 programming segments. Vista confirmed that it now fully understands this regulatory requirement.
14. With respect to its non-compliance regarding its over-and-above CCD condition of licence, Vista confirmed that it would adhere to a condition of licence requiring the repayment of the \$2,400 shortfall, as well as a condition of licence requiring the

payment of an additional \$2,400 as a corrective measure for the harm caused to the Canadian broadcasting system by its failure to contribute within the required timeframe.

15. Based on the seriousness of the non-compliance, the Commission finds it appropriate to require Vista to repay the \$2,400 shortfall and to make an additional CCD contribution in the amount of \$2,400.
16. Although the broadcasting system has been deprived of these funds for the 2015-2016, 2016-2017 and 2017-2018 broadcast years, the Commission acknowledges the explanations provided by the licensee and notes the measures it has put in place to address the various instances of non-compliance and to ensure compliance going forward.
17. This is the licensee's first instance of non-compliance. The Commission does not consider that imposing a short-term licence renewal is necessary in this case. However, to ensure that the licensee fulfills the CCD shortfall and in light of the seriousness of the non-compliance, the Commission has set out a **condition of licence** in the appendix to this decision requiring the licensee to:
  - pay the remaining CCD shortfall of \$2,400 by **30 September 2019** and file proof of payment by **30 November 2019**; and
  - pay an additional CCD contribution of \$2,400 by **31 August 2020** and file proof of payment by **30 November 2020**.

## **Licence amendments**

### **Over-and-above Canadian content development contributions**

18. The licensee proposed to delete its condition of licence 11 which requires CJJM-FM to make an annual over-and-above CCD contribution of \$800. Vista stated that CJJM-FM is now an established radio station (since 2007) and has met the CCD commitments made for its first licence term.
19. It is the Commission's general practice to require that radio stations make over-and-above CCD contributions over seven consecutive broadcast years, upon commencement of operations.
20. The Commission notes that CJJM-FM has been subject to an over-and-above CCD condition of licence since its acquisition in 2012 and would have therefore made the required contributions for seven consecutive broadcast years by the end of the current licence term. Consequently, the Commission finds it appropriate to delete the over-and-above CCD condition of licence for CJJM-FM for the next licence term.

### Category 3 musical selections

21. The licensee stated that it would be to the benefit of the community for CJJM-FM to no longer be subject to its condition of licence requiring the broadcast of category 3 musical selections. It therefore applied to delete this condition of licence.
22. The Commission does not generally approve requests to delete conditions of licence for which the licensee has been found in non-compliance.
23. In the absence of specific circumstances justifying the requested licence amendment, and given that the licence was found in non-compliance with this condition of licence, the Commission finds it appropriate to continue to require that the licensee be subject to its condition of licence requiring the broadcast of musical selections drawn from content category 3.

### Conclusion

24. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CJJM-FM Espanola from 1 September 2019 to 31 August 2026. The **conditions of licence** are set out in the appendix to this decision.
25. The Commission **approves** Vista Radio Ltd.'s application to amend the broadcasting licence for CJJM-FM to delete its over-and-above Canadian content development condition of licence.
26. The Commission **denies** Vista Radio Ltd.'s application to amend the broadcasting licence for CJJM-FM to delete its condition of licence requiring that the station broadcast 10 hours of content category 3 (Special Interest Music) musical selections each broadcast week.

### Reminders

27. 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 increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. The non-payment of CCD contributions therefore has the potential to cause harm to the Canadian broadcasting system.
28. 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 its regulatory obligations.

29. The Commission reminds the licensee that it must comply at all times with the requirements of the *Broadcasting Act* (the Act), the *Radio Regulations, 1986* and its conditions of licence.
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.

### **Employment equity**

31. Because Vista is subject to the *Employment Equity Act* and files reports with the Department of Employment and Social Development, its employment equity practices are not examined by the Commission.

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
- *Various radio programming undertakings – Acquisition of assets*, Broadcasting Decision CRTC 2012-577, 19 October 2012

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

## Appendix to Broadcasting Decision CRTC 2019-271

### Terms, conditions of licence and expectation for the commercial radio programming undertaking CJJM-FM Espanola, Ontario

#### Terms

The licence will expire 31 August 2026.

#### 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, 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), in any broadcast week, devote, between 6 a.m. and 6 p.m., in the period from Monday to Friday of the same broadcast week, at least 40% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety.
3. The licensee shall, in each broadcast week, broadcast 10 hours of content category 3 (Special Interest Music) musical selections.
4. To fulfill its outstanding commitments to Canadian content development (CCD) set out in Appendix 2 to *Various radio programming undertakings – Acquisition of assets*, Broadcasting Decision CRTC 2012-577, 19 October 2012, the licensee shall, by no later than 30 September 2019, make a \$2,400 contribution to the promotion and development of Canadian content. Of this amount, \$600 shall be allocated to FACTOR. The remaining \$1,800 shall be allocated to local initiatives and to funding for local musicians. In addition, the licensee shall file, by 30 November 2019, and in a form deemed acceptable by the Commission, proof of payment regarding the additional contribution to CCD as well as supporting documentation for the eligibility of the portion of the contribution not made in whole or in part to FACTOR or MUSICACTION.
5. The licensee shall, by no later than 31 August 2020, make a \$2,400 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. This contribution shall be devoted to FACTOR, MUSICACTION and/or an eligible initiative 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 2020, and in a form deemed acceptable by the Commission, proof of payment regarding the additional contribution to CCD as well as supporting documentation for the eligibility of the portion of the contribution not made in whole or in part to FACTOR or MUSICACTION.

For the purposes of these conditions, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meaning as that set out in the Regulations.

### **Expectation**

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