



Broadcasting Decision CRTC 2020-238

PDF version

References: 2020-75, 2020-75-1, 2020-75-2 and 2020-75-3

Ottawa, 31 July 2020

9116-1299 Québec inc.
Maniwaki, Quebec

*Public record for this application: 2019-1143-8
Virtual public hearing in the National Capital Region
16 June 2020*

CFOR-FM Maniwaki – Non-renewal of licence

*The Commission **denies** the application from 9116-1299 Québec inc. to renew the broadcasting licence for the French-language commercial radio station CFOR-FM Maniwaki, Quebec.*

In light of the severity and recurrence of the current instances of non-compliance; of the station's history of non-compliance and the licensee's actions, which demonstrate its poor understanding of its conditions of licence and regulatory obligations, or its lack of willingness to respect them; of its inability to implement the necessary measures to ensure compliance; and of its disregard for the Commission's authority and for its responsibilities as a broadcaster, the Commission is not convinced that the imposition of conditions of licence or mandatory orders, a suspension or a short-term renewal would be effective measures. Consequently, the Commission finds that not renewing the licence is the only appropriate measure in the circumstances.

*The Commission also **denies** the procedural request for an extension filed by the licensee to allow the latter to file the documentation required to fulfill the commitments made to the Commission as part of the public hearing. The licensee filed the procedural request after the due date agreed upon by the Commission for the licensee to carry it out. The denial of this procedural request for an extension renders null and void the procedural request related to this process, submitted orally by the Commission's counsel during the public hearing, since the licensee never filed the application to change its ownership and effective control, despite its commitment to this effect made during the public hearing.*

Application

1. The Commission has the authority, pursuant to section 9(1) of the *Broadcasting Act* (the Act), to issue and renew licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in section 3(1) of the Act.

2. On 3 June 2019, the Commission issued Broadcasting Notice of Consultation 2019-194, which requested that radio station licensees to submit renewal applications for their broadcasting licences expiring 31 August 2020 to continue their operations after this date. Broadcasting Notice of Consultation 2019-194 clearly indicated that the licensees had to submit their renewal applications by no later than 31 August 2019.
3. In response to this notice, 9116-1299 Québec inc. (9116-1299 Québec) filed on 8 November 2019 an application to renew the broadcasting licence for the French-language commercial radio station CFOR-FM Maniwaki, Quebec, which expires 31 August 2020. The Commission did not receive any interventions regarding this application.
4. The Commission notes that Ms. Josée Cholette, administrator and majority shareholder exercising control of the licensee, was called to the public hearing, but she informed the Commission on 18 June 2020 that she would not appear and that she consented to the Commission proceeding with an *ex parte* hearing. Minority shareholder and administrator of 9116-1299 Québec Mr. Roch Lépine, who was also called to appear, participated to the hearing to represent the licensee and answer the Commission's questions.

Background

5. In Broadcasting Decision 2012-703, the Commission renewed the broadcasting licence for CFOR-FM for a short term as a result of the licensee's non-compliance with sections 9(2) and 15(2) of the *Radio Regulations, 1986* (the Regulations) regarding the filing of complete annual returns on time and contributions to Canadian content development, as well as the licensee's non-compliance in regard to Canadian talent development¹ (CTD) contributions.
6. In Broadcasting Decision 2015-324, the Commission renewed the station's licence for a short term as a result of the licensee's non-compliance with conditions of licence 2 and 3 set out in Appendix 12 to Broadcasting Decision 2012-703 requiring the licensee to pay the CTD shortfall of \$400 for the 2004-2005 broadcast year and the Canadian content development (CCD) shortfall of \$480 for the 2008-2009 and 2009-2010 broadcast years.
7. Finally, in Broadcasting Decision 2018-231, the Commission found the licensee in non-compliance with sections 8(1), 8(4), 8(5), 8(6), 9(3) and 9(4) of the Regulations regarding the filing of programs logs, audio recordings and lists of musical selections, and the requirement to respond to any requests for information from the Commission, as well as with the conditions of licence 2, 3 and 4 set out in the appendix to Broadcasting Decision 2015-324 relating to the over-and-above CCD contributions shortfall and the broadcast of an on-air announcement. Accordingly,

¹ In Broadcasting Public Notice 2006-158, the Commission replaced the expression "Canadian talent development" with "Canadian content development."

the Commission renewed the broadcasting licence for CFOR-FM for a short term of two years, imposed a mandatory order requiring the licensee to comply at all times with its condition of licence 2. The Commission also reminded the licensee to obtain prior approval from the Commission before making any changes in ownership that could result in a change in effective control.

Non-compliance

8. In Broadcasting Notice of Consultation 2020-75, the Commission stated that the licensee was in apparent non-compliance with the following:
 - section 9(2) of the Regulations relating to the filing of complete annual returns by 30 November of each year, for the 2018-2019 broadcast year;
 - section 8(1) of the Regulations relating to the filing of a complete and accurate program log;
 - section 8(4) of the Regulations relating to the filing of a program log or a recording for a given day and with a certificate signed by or on behalf of the licensee attesting to the accuracy of its content;
 - sections 8(5) and 8(6) of the Regulations relating to the filing of a clear and complete audio recording;
 - section 9(3)(a) of the Regulations relating to filing a complete and accurate self-assessment report;
 - section 9(3)(b) of the Regulations relating to filing a complete and accurate music list;
 - section 9(4) of the Regulations relating to the requirement for the licensee to respond to any inquiry regarding compliance with its regulatory obligations;
 - section 11(4) of the Regulations which requires licensees to obtain the prior approval of the Commission before making any change in ownership that could result in a change in effective control and/or any change in ownership that would result in a person who owns less than 50 per cent of the licensee's issued common shares, owning 50 per cent or more of those shares but not, directly or indirectly, having effective control of the licensee;
 - condition of licence 2 set out in Appendix 1 to Broadcasting Decision 2018-231, which requires the licensee to:
 - make a CCD contribution of \$880 that is over and above any CCD contributions required pursuant to the Regulations; and
 - file with the Commission, no later than 30 November 2018, proof of payment accompanied by supporting documentation for the CCD contribution;
 - Broadcasting Mandatory Order 2018-232 relating to compliance with the above-noted condition of licence 2; and

- condition of licence 3 set out in Appendix 1 to Broadcasting Decision 2018-231, which requires the licensee to:
 - make a CCD contribution of \$880 that is over and above any CCD contributions required pursuant to the Regulations and condition of licence 2; and
 - file with the Commission, no later than 30 November 2018, proof of payment accompanied by supporting documentation for the CCD contribution.
9. In that notice, the Commission reiterated that, given the recurring nature of the non-compliance and the licensee's apparent lack of cooperation, it was concerned with the licensee's ability and commitment to operate the station in a compliant manner. The Commission further noted that should the licensee again breach the regulatory requirements, including the mandatory order, it would consider the possibility of suspending, not renewing or revoking CFOR-FM's broadcasting licence under sections 9 and 24 of the Act. For these reasons, it called the licensee to appear at a public hearing.

Procedural request

10. During the public hearing, Mr. Lépine made certain commitments to the Commission, including a commitment to submit, no later than 26 June 2020, at 5:00 p.m., the documents that would enable him to complete, on behalf of 9116-1299 Québec, an application to renew the licence for CFOR-FM.
11. More specifically, he had to file the annual return for the 2018-2019 broadcast year, as well as all the forms, documents and supporting documentation that must be included with this return.
12. Mr. Lépine also committed to file application form 139 for the change in ownership and effective control that occurred in 2019. This form had to be accompanied by a brief explaining why the transaction served the public interest and describing the impact of this transaction on the activities of the broadcasting undertaking. Mr. Lépine also had to file any documents detailing the transfer of the shares and the purchase price, including the contract for the sale of shares,² leases and most up-to-date financial statements.

² A copy of the contract for the sale of shares was sent to the Commission on 29 June 2020, at 4:57 p.m.. However, the application form 139 concerning the change in ownership and effective control that occurred in 2019 was not sent, and neither was the brief explaining why the transaction served the public interest and describing the impact of this transaction on the activities of the broadcasting undertaking. The licensee also did not indicate the purchase price nor whether leases were assumed. Finally, the most up-to-date financial statements were not sent.

13. Further, Mr. Lépine agreed to file with the Commission the resolution of the administrators of 9116-1299 Québec authorizing it to sign and file, for and on behalf of 9116-1299 Québec, the abovementioned application form 139.
14. Finally, Mr. Lépine had to file the resolution of the administrators of 9116-1299 Québec authorizing Mr. Lépine to make, for and on behalf of 9116-1299 Québec, the commitments made during the public hearing to renew CFOR-FM's broadcasting licence, as well as to take all necessary or useful actions to fulfill the commitments.
15. However, Mr. Lépine did not meet the deadline set by the Commission. Only on 29 June 2020, at 4:57 p.m., after the agreed-upon deadline, did he write to Commission staff to request an extension to provide the documentation required to fulfill the commitments made. The extension request did not specify the date by which the licensee could file the required documentation with the Commission. Furthermore, the licensee attached to this request inconsistent documentation, including documents that are not required by the Commission in the context of the commitments made.³
16. Mr. Lépine provided the following justifications for his extension request:
 - the 24 June 2020 statutory holiday (Quebec national holiday);
 - the closure of most institutions on 22, 23 and 24 June 2020, including the licensee's accounting firm and notary offices;
 - the absence of the hearing secretary on 25 June 2020.

Commission's analysis and determination

17. In regard to the hearing secretary's absence last 25 June, which the licensee invoked as a reason for not meeting the deadline, the Commission notes that any communication by email or telephone with the secretary was forwarded to another Commission staff member, and no communication went unanswered.
18. In his procedural request, Mr. Lépine in no way explained the reasons why he filed so late and, especially, after the agreed-upon deadline to do so had passed.
19. The Commission clearly indicated to Mr. Lépine, during the public hearing and in a follow-up email sent on 18 June 2020 that the commitments made had to be fulfilled no later than 26 June 2020, at 5:00 p.m., and filed electronically via the My CRTC Account.

³ The licensee sent a copy of a letter already sent to the Commission in May 2020, a copy of a letter from the Commission dated 10 January 2018 approving a previous transaction and a copy of the contract for the sale of shares pursuant to which a transfer of shares would have taken place with an effective date of 25 June 2019.

20. Subsequently, during a telephone conversation held on 22 June 2020 with Commission staff, Mr. Lépine was clearly informed that, if he wished to obtain an extension, he needed to file a procedural request with the Commission before the deadline of 26 June 2020 at 5:00 p.m.
21. The Commission has difficulty understanding why Mr. Lépine ignored the instructions regarding the filing commitments and why he complied with neither the agreed-upon filing deadline nor the procedure for filing via My CRTC Account. Moreover, while Mr. Lépine cited as a justification for the procedural request for an extension that several institutions were closed, he failed to file documents that were entirely within his control, such as the application form 139 to change the ownership and effective control that occurred in 2019, as well as the brief explaining why the transaction was in the public interest and describing the impact the transaction had on the broadcasting undertaking's activities. Since the production of these documents did not require the participation of an external resource, Mr. Lépine could have filed this documentation by the deadlines set at the hearing and without a request for an extension. Such an action would have enabled Mr. Lépine to demonstrate to the Commission that he takes fulfilling his commitments seriously and considers them important.
22. In addition to fact that the documentation the licensee submitted was very incomplete, its procedural request for an extension breached the following:
 - the fact that a request for an extension must be submitted before the deadline has passed;
 - section 13(1)(a) of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, since the request was not submitted to the Commission Secretary General via My CRTC Account;
 - Broadcasting and Telecom Information Bulletin CRTC 2010-453-1 regarding the obligation to file applications electronically and to use the Commission's forms; and
 - Broadcasting and Telecom Information Bulletin CRTC 2010-959, given that the request was not sent to the Commission Secretary General as clearly indicated in the bulletin.
23. Given that this procedural request was filed after the deadline agreed-upon by the hearing panel and that the justifications provided by Mr. Lépine in no way demonstrated the seriousness and timeliness that he should have demonstrated to fulfill the commitments made during the public hearing, the Commission is even more convinced that neither Mr. Lépine nor the licensee understands, to this day, the nature of their regulatory obligations. They seem to continue to believe that the deadlines imposed by the Commission are flexible. The Commission is of the opinion that Mr. Lépine's behaviour in relation to the commitments made at the

public hearing demonstrate his contempt for the Commission's regulations and the absence of any due diligence to comply with them.

24. In light of the above, the Commission **denies** the procedural request for an extension to file the documentation relating to the commitments made at the public hearing. Consequently, the request associated with this procedural request submitted orally by the Commission's counsel at the hearing becomes null and void since the licensee did not file with the Commission the application form 139 regarding the change in ownership and effective control by the set deadline. Since Mr. Lépine failed to fulfill the commitment he made at the hearing and did not file any applications in this regard, the Commission does not have before it any request to modify the licensee's ownership and effective control, merging the applications is not necessary.

Filing of annual returns

25. Section 10(1)(i) of the Act authorizes the Commission to make regulations in furtherance of its objects requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify.
26. Pursuant to this authority, the Commission set out section 9(2) of the Regulations, which requires licensees to file their annual returns, including financial statements, no later than 30 November of each year for the broadcast year ending the previous 31 August. The specific filing requirements are set out in Broadcasting Information Bulletin 2011-795.
27. In a letter dated 22 January 2020, the Commission indicated that the licensee had not submitted the annual return for the 2018-2019 broadcast year and requested that the licensee explain what led to this apparent non-compliance. The Commission notes that the licensee did not respond to this letter, even after several attempts by the Commission staff to obtain the requested information.
28. At the public hearing, Mr. Lépine stated that an accounting firm was previously responsible for producing all the financial reports for the station. However, when Ms. Josée Cholette, the station's majority shareholder and administrator, arrived at the station, she took over this responsibility. Given that Ms. Cholette did not appear at the hearing, the reasons for this non-compliance could not be explained further.
29. To ensure that this non-compliance does not reoccur, Mr. Lépine submitted that he would be responsible for the annual returns going forward. He added that an accounting firm would once again be hired for the station's bookkeeping. Further, at the public hearing, he committed to file the annual return with the Commission by no later than 26 June 2020, at 5:00 p.m.

Commission's analysis and decision

30. Although the licensee can use external resources to help it adhere to its regulatory requirements, it is ultimately held responsible for the results and should be aware of its obligations to prevent non-compliance in this regard.
31. The Commission notes that while there seems to be communication issues within the station, these problems should not have prevented Mr. Lépine from becoming aware of his obligations as a shareholder and administrator. Further, Mr. Lépine has been a member of CFOR-FM's staff for a long time and, given that he now wishes to take on more responsibility within the station, the Commission considers that he should be more aware of the regulatory obligations of the licensee and that he could have communicated with the Commission on multiple occasions if clarifications were necessary. Ms. Cholette's failure to follow up and to appear at the hearing demonstrate a complete disregard for her regulatory obligations and a lack of due diligence to comply with them.
32. Compliance with the requirements relating to the filing of complete and accurate annual returns is essential to the Commission. An annual return that is filed late or with incomplete or inaccurate information does not allow for a complete assessment of licensees' compliance with respect to CCD contributions. Accordingly, the annual filing of the required information enables the Commission not only to assess effectively licensees' performance and compliance with the regulations and their obligations, but also to assess and regulate the broadcasting industry effectively. Annual returns are a key element of the Commission's current monitoring plan and an authoritative source of statistics on the Canadian broadcasting industry for use by all stakeholders. These filings are important indicators of whether the licensee has the willingness, ability and knowledge to achieve and maintain compliance.
33. In light of the above, the Commission finds the licensee in non-compliance with section 9(2) of the Regulations for the 2018-2019 broadcast year.

Radio monitoring materials

34. Pursuant to its authority under section 10(1)(i) of the Act, the Commission also set out regulations relating to monitoring materials.
35. Sections 8(1), 8(4), 8(5) and 8(6) of the Regulations set out the requirements relating to keeping, retaining and furnishing to the Commission program logs and recordings. Sections 9(3)(a) and 9(3)(b) of the Regulations set out the requirements relating to the information to be included in a station's self-assessment report, as well as to the information on musical selections that the licensee must include in its music list for any period specified by the Commission.
36. On 20 November 2018, the Commission sent a first request to the licensee to obtain the radio monitoring materials for the broadcast week of 4 to 10 November 2018. However, the Commission received no response from the licensee.

37. On 27 May 2019, the Commission sent the licensee a second request to obtain the radio monitoring materials for the week of 5 to 11 May 2019 to conduct the station's performance evaluation. The licensee was required to submit the required material no later than 10 June 2019. After numerous follow-ups, the Commission was unable to obtain all the material necessary to adequately assess whether the station was in compliance with the regulatory requirements.
38. On 27 June 2019, the Commission provided more details to the licensee concerning the material to submit. After receiving a USB key containing the materials, the Commission informed the licensee of certain anomalies and sent it instructions to remedy the situation.
39. More specifically, the program log was incomplete, since the data ended before midnight for the broadcast days of 6 May, 10 May and 11 May 2019. Additionally, 32 hours and 11 minutes of audio recording were missing from the entirety of the broadcast week, which is made up of 126 hours. Given that the audio recording was incomplete, the Commission was unable to verify the licensee's compliance in regard to French-language and Canadian music. Furthermore, the self-assessment form and list of musical selections were incomplete. No cue sheet was provided for the program "Ça sonne country" and the 161 musical selections broadcast were not included in the self-assessment report or the list of musical selections. The latter also did not identify the Canadian or French-language musical selections.
40. The licensee claimed that it sent all the required material, except the audio recording. According to the licensee, the audio recording was missing because of an error by the technician.
41. To ensure future compliance, Mr. Lépine stated that, from then on, he would be the person responsible for this aspect. He added that he hired two presenters and that he purchased more adequate software to facilitate production of the requested material.

Commission's analysis and decision

42. Adherence to the requirements relating to the submission of complete and accurate program logs, self-assessment reports and lists of musical selections is indispensable for the Commission to monitor a station's performance and verify its compliance with the Regulations and its conditions of licence. Further, when the material filed contains inconsistencies, this affects the Commission's ability to independently confirm a licensee's adherence to its regulatory obligations. These filings are important indicators as to whether the licensee has the willingness, ability and knowledge necessary to bring itself into compliance and maintain such compliance.
43. The Commission was unable to conduct a complete performance assessment on the station's programming requirements since the licensee did not provide all the requested material. Moreover, due to the incomplete audio recording, the Commission was unable to assess the compliance with Canadian content and French-language vocal music requirements.

44. This is the second consecutive licence term during which the licensee is in non-compliance with the filing of monitoring materials, specifically with sections 8(1), 8(4), 8(5), 8(6) and 9(3)(b). Moreover, the Commission notes that it tried three times, without results, to obtain the complete monitoring materials to proceed to an adequate performance evaluation.
45. While the licensee stated that it purchased software that would enable it to produce program logs acceptable to the Commission, the licensee proposed no measures to comply with the sections mentioned in the previous paragraph and with section 9(3)(a) of the Regulations. The Commission doubts the in-depth knowledge of Mr. Lépine, who seems to be the only person responsible for the monitoring materials, concerning the regulatory requirements and his ability to adequately train future station staff. Ms. Cholette's failure to follow up and to appear at the hearing demonstrate a complete disregard for her regulatory obligations and a lack of due diligence to comply with them.
46. Consequently, the Commission has serious doubts about the licensee's ability to comply with the regulatory requirements relating to radio monitoring materials in the future.
47. In light of the above, the Commission finds the licensee in non-compliance with sections 8(1), 8(4), 8(5), 8(6), 9(3)(a) and 9(3)(b) of the Regulations.

Commission request for information

48. In addition to the regulations mentioned above, the Commission established section 9(4) of the Regulations pursuant to its authority under section 10(1)(i) of the Act. Section 9(4) of the Regulations requires the licensee to respond to any complaint or request for resolution of a dispute filed by any person; to any request for information regarding programming originated or distributed by the licensee or regarding the licensee's technical operations, subscribership, financial affairs or ownership; and to any request for information regarding the licensee's adherence to the conditions of its licence, the Act, the Regulations, industry standards, practices or codes or any other self-regulatory mechanism of the industry.
49. On 24 January 2019, after having tried to reach the licensee several times, the Commission sent it an email asking it to submit the material required for the station's performance evaluation for the week of 4 to 10 November 2018. In a letter dated 22 January 2020, the Commission indicated that it had not received the materials requested.
50. Furthermore, on 7 August 2019, the Commission sent a courtesy email reminding the licensee to submit a renewal application no later than 31 August 2019. On 23 August 2019, Commission staff tried to reach the licensee by telephone to clarify the situation, but the telephone number on file for the station was out of service, and staff was unable to reach anyone at the station at that time.

51. After obtaining another telephone number, Commission staff left a message on Mr. Lépine's voicemail on 4 September 2019 informing him that it was still waiting for a licence renewal application for CFOR-FM. On 4 October 2019, staff managed to reach Mr. Lépine by telephone, and he stated that the resource person for the station was now Ms. Cholette and that she would contact the Commission to follow up.
52. On 22 October 2019, having still not heard from the licensee, Commission staff sent an email and a letter by registered mail again asking the licensee to submit a renewal application no later than 4 November 2019.
53. It was not until 1 November 2019 that Ms. Cholette tried to reach Commission staff, and on 4 November 2019, staff was able to speak to Ms. Cholette. During this telephone conversation, staff responded to questions concerning the licence renewal process and application form. It provided the licensee with the telephone number for the small business helpline to help the licensee complete the form if required. Staff also reminded the licensee to submit its annual return, which had to be submitted on 30 November 2019.
54. The Commission received the licence renewal application on 8 November 2019, over two months after the deadline of 31 August 2019 indicated by the Commission in the Broadcasting Notice of Consultation 2019-194. However, the Commission received no response to the questions asked in the letter the Commission sent on 22 October 2019, and the licensee did not submit its annual return for the 2018-2019 broadcast year, despite the Commission's reminder.
55. In the absence of numerous pieces of information required to conduct the station's compliance assessment, Commission staff sent, by email and by registered mail, a clarification letter to complete the application file. The licensee had to reply by 4 February 2020. However, Ms. Cholette apparently did not open the email until 3 February 2020. After communicating with Ms. Cholette, the Commission scheduled a call to answer her questions for Monday, 10 February 2020, at 11:00 a.m.
56. On 10 February 2020, Ms. Cholette informed Commission staff in writing that she would be unable to discuss the letter as planned. Eventually, a telephone appointment was scheduled for 13 February 2020 at 1:00 p.m. During this conversation, staff reviewed each of the questions, providing a summary of the applicable regulations and the reasons this information is important. The Commission notes that Ms. Cholette's knowledge of broadcasting was exceedingly limited, as was her availability.
57. During Mr. Lépine's appearance at the hearing, the Commission asked him why the courier company employee was unable to deliver the registered mail to the station on 22 October 2019 and 22 January 2020 to 139 Principale Street South, Maniwaki. More specifically, the letter dated 22 October 2019 was directly returned to the

Commission, and the letter dated 22 January 2020 was forwarded to 235 Montée Paiement, Gatineau, and was then returned to the Commission.

58. In response to this apparent non-compliance, Mr. Lépine claimed that he is always present at the station, but that he was probably on the air when the courier tried to deliver the Commission's documentation. He added that, as of the end of February, he could not count on the assistance of Ms. Cholette, who was occupied full time performing her tasks as a pharmacy owner.

Commission's analysis and decision

59. This is the second consecutive licence term during which the licensee has been in non-compliance with the requirement to respond to a Commission request for information. During the current licence term, not only did the licensee fail to respond to the Commission's numerous requests to file the monitoring materials, it also did not submit its licence renewal application by 31 August 2020, as required in Broadcasting Notice of Consultation 2019-194. Subsequently, it did not follow up on the Commission request to explain why it had not declared its intentions regarding CFOR-FM's licence renewal. In addition, the licensee did not reply to the Commission request for information to enable it to complete the station's licence renewal application process.
60. The failure to reply to a Commission request for information is a severe non-compliance. The lack of information prevents the Commission from assessing a station's compliance. The Commission considers that neither Mr. Lépine nor Ms. Cholette grasps the importance of responding to Commission requests, which according to Mr. Lépine, are only administrative formalities.
61. The licensee sent two documents to the Commission on 14 May 2020 in response to the Commission information requests. However, these documents do not contain the requested information. Only by questioning Mr. Lépine at the public hearing was the Commission able to obtain the majority of the answers to its requests.
62. In light of the above, the Commission finds the licensee in non-compliance with section 9(4) of the Regulations.

Change in ownership

63. Section 11(4) of the Regulations specifies that, except as otherwise provided pursuant to a condition of its licence, the licensee must obtain the prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in a change by whatever means of the effective control of its undertaking (section 11(4)(a)) or would result in a person alone who owns less than 50 per cent of the issued common shares of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee (section 11(4)(b)(iv)).

64. On multiple occasions, in 2003 and twice in 2017, the licensee made changes in ownership and in effective control of the licensee without obtaining the prior approval of the Commission. In a letter dated 10 January 2018, the Commission reminded the licensee that it was required to request the prior approval of the Commission before making any transaction that would result in a change of the effective control of CFOR-FM. Then, in Broadcasting Decision 2018-231, the Commission reiterated this reminder.
65. Further to the renewal application, the Commission noted that the shareholders of 9116-1299 Québec as indicated in the application did not match those on file with the Commission and that the distribution of the licensee's shares issued and in circulation had probably been changed without prior approval from the Commission. According to the information in the renewal application, Mr. Lépine holds 33.33% of the undertaking's shares and Ms. Cholette holds 66.66%. The Commission also noted a change in the composition of the board of directors.
66. During the public hearing, Mr. Lépine stated that the change had taken place without the prior approval of the Commission, because he considered it unnecessary since the transaction did not introduce any new shareholders. He added that he made a transaction in 2004 and the Commission did not reprimand him for not having obtained its approval. Therefore, he believed that the Commission's prior approval was not required, as in 2004.
67. In regard to the Commission's reminders concerning section 11(4) of the Regulations, Mr. Lépine stated that he was unaware of them.
68. At the public hearing, Mr. Lépine committed to provide all the documentation necessary to evaluate an application for a change in ownership and licensee control. More specifically, he committed to file with the Commission an application form 139, a brief, the contract for the sale and purchase of shares, a lease (if applicable) and the station's financial statements. In addition, because Mr. Lépine does not control the licensee, as a minority shareholder, and because of his understanding that the control of the company is with the person holding over 50% of the shares, he committed to obtain a resolution of the administrators authorizing him to sign and file documents as well as to respond to questions from the Commission on behalf of the licensee.
69. Mr. Lépine did not offer an explanation to justify the licensee's lack of response. He simply stated that Ms. Cholette should have followed up as required and that he would discuss the matter with her.

Commission's analysis and decision

70. Pursuant to section 5(1) of the Act, the Commission regulates and supervises all aspects of the Canadian broadcasting system in the public interest. Section 3(1)(a) of the Act specifies that, according to the Canadian broadcasting policy, the Canadian broadcasting system must be effectively owned and controlled by Canadians, and section 3(1)(f) of the Act sets out that each broadcasting undertaking must make

maximum use of Canadian resources. The review of ownership transactions in the public interest is part of the Commission's regulatory and supervisory mandate under the Act.

71. In its review of transactions, the Commission must be satisfied that the application meets the requirements set out in Broadcasting Regulatory Policy 2014-459 (Tangible Benefits Policy). In that policy, the Commission notes that since it does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval of the transaction is in the public interest pursuant to the general objectives of the Act and that the benefits of the transaction, tangible or intangible, are commensurate with the size and nature of the transaction.
72. In this case, the Commission cannot evaluate whether the transaction is in the public interest or whether the imposition of tangible benefits is necessary, since the licensee failed to obtain the prior approval of the Commission before making a change in effective control.
73. The Commission doubts the licensee's willingness to operate in compliance with the Regulations, as well as the licensee's understanding of the Regulations with respect to its regulatory obligations. Furthermore, the licensee does not accept responsibility for this non-compliance, which has been repeated on multiple occasions since 2004.
74. In light of the above, the Commission finds that the licensee made a change in effective control without the prior approval of the Commission. Accordingly, it finds the licensee in non-compliance with section 11(4) of the Regulations. The Commission considers that this non-compliance is severe, especially given that the licensee has been in non-compliance with section 11(4) of the Regulations before and that the Commission reminded it three times⁴ of its obligations regarding ownership.
75. The Commission also notes that had an approval request for the transaction been filed to obtain prior authorization for a change in the ownership and effective control of the licensee, tangible benefits would likely have been required. Given that no request was filed with the Commission, the amount that would have been required cannot be determined and the impact of this non-compliance on the Canadian broadcasting system cannot be assessed, except to note that the licensee's negligence caused harm to the system.

Over-and-above contributions to Canadian content development

76. Sections 3(1)(e) and 3(1)(s)(i) of the Act indicate that each element of the Canadian broadcasting system must contribute in an appropriate manner to the creation and presentation of Canadian programming and that private networks and programming

⁴ The Commission issued these reminders in administrative letters L2004-0003 and L2018-0008, as well as in Broadcasting Decision 2018-231, regarding CFOR-FM's last licence renewal.

undertakings should, to an extent consistent with the financial and other resources available to them, contribute significantly to the creation and presentation of Canadian programming. In accordance with this aspect of the Canadian broadcasting policy and pursuant to its authority under section 9(1), the Commission has imposed conditions of licence requiring programming undertakings to contribute in various ways to the creation of Canadian programming, including by imposing CCD requirements.

77. In Broadcasting Decision 2015-324, the Commission imposed conditions of licence 2 and 3, which required the licensee to pay over-and-above contributions to CCD of \$880 before 31 August 2016 and of \$880 by before 31 August 2017.
78. During CFOR-FM's last licence renewal, in Broadcasting Decision 2018-231, the Commission determined that the licensee was in non-compliance with its conditions of licence regarding the over-and-above CCD contributions, incurring a shortfall of \$1,760. The Commission imposed conditions of licence 2 and 3 requiring the licensee to pay two DCC contributions of \$880 no later than 30 September 2018 and to provide the proof of payment no later than 30 November 2018. Of this amount, 45% was to be allocated to FACTOR or MUSICACTION, 40% to an eligible project as set out in paragraph 108 of Broadcasting Public Notice 2006-158, and 15% to the Community Radio Fund of Canada. In addition to these conditions of licence, the Commission imposed Broadcasting Mandatory Order 2018-232 requiring the licensee to comply with its condition of licence 2.
79. According to the Commission's records, the licensee did not make any of the contributions required in its conditions of licence 2 and 3.
80. At the public hearing, Mr. Lépine claimed that the amount requested had been paid by his former colleague. He added that, according to him, there was confusion concerning the contributions because he would have paid amounts to an organization previously accepted by the Commission, but which is no longer accepted. Mr. Lépine also claimed to have made a payment to MUSICACTION for the 2018-2019 and 2019-2020 broadcast years.
81. To address this non-compliance, Mr. Lépine indicated that the licensee plans to rehire an accounting firm to prepare the documents pertaining to the contributions. Mr. Lépine will be responsible for filing the supporting documentation with the Commission.

Commission's analysis and decision

82. It is important for radio station licensees to respect their CCD obligations, given that CCD initiatives help to develop and advance the careers of young artists while increasing the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. Therefore, licensees that do not make their CCD contributions can cause harm to the Canadian broadcasting system.

83. The Commission verified Mr. Lépine's statements to the effect that the non-compliance with respect to payment of over-and-above contributions could be explained by the fact that the licensee made a payment to an ineligible initiative, and it did not find any evidence to support this assertion. Regarding the payments that the licensee claimed to have made to MUSICACTION, in the absence of proof of payment, the Commission is unable to confirm that they were in fact made.
84. During previous licence renewals, the licensee suggested that it had been improperly advised by Commission staff. In this case, once more, the licensee did not accept responsibility for the station's instances of non-compliance associated with payment of CCD contributions and seemed to justify these instances with the confusion caused by the Commission's advice.
85. The licensee is in non-compliance for the fourth consecutive licence term with respect to its over-and-above CCD contributions. In this case, the licensee also breached Broadcasting Mandatory Order 2018-232 requiring it to comply with its condition of licence 2 regarding over-and-above CCD contributions.
86. In light of the above, the Commission finds the licensee in non-compliance with conditions of licence 2 and 3 set out in Appendix 1 to Broadcasting Decision 2018-231 and with Broadcasting Mandatory Order 2018-232.

Regulatory measures

87. 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 assessed 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 made by the licensee and the actions taken to rectify the situation are also considered.
88. This is the fourth consecutive licence term during which the licensee has been found in non-compliance with the regulatory requirements. Further, it did not fulfill the commitments made to the Commission at the public hearing to provide the Commission with the documents that would enable it to process CFOR-FM's licence renewal application no later than 26 June 2020, at 5:00 p.m.
89. In Broadcasting Decision 2018-231, the Commission warned the licensee that should it once again breach the regulatory requirements, including the mandatory order, the Commission would consider suspending, not renewing or revoking the licence pursuant to sections 9 and 24 of the Act. As the Commission explained to the licensee at the public hearing, breaching a mandatory order imposed by the Commission has many implications for the licensee and could even lead to legal proceedings for contempt of court in the Federal Court.
90. The Commission also considers that the responses provided by the licensee during the current licence term and during this licence renewal process raise several concerns over its credibility, its commitment to its regulatory obligations and its

willingness to bring the station into compliance in the future. The Commission has serious doubts and is not convinced that the licensee has the ability to assume its responsibilities as a broadcaster and would respect the Commission's authority should the station's licence be renewed.

91. It is the licensees' responsibility to know their regulatory obligations to ensure their stations' compliance. The licensee's responses to the apparent non-compliance did not convince the Commission that it has the knowledge necessary to ensure its compliance. The Commission had several exchanges with the licensee to guide it toward compliance with its obligations and warned it repeatedly of the consequences of its non-compliance. Nevertheless, the licensee has not implemented any measure to remedy the non-compliance.
92. Although the licensee indicated in its licence renewal application that it intended to broadcast 124 hours and 30 minutes of local programming per broadcast week during the next licence term, the Commission noted that CFOR-FM currently broadcasts very little local programming, including news, on its airwaves, contrary to what is set out in Broadcasting Public Notice 2006-158. Further, given the small number of employees currently in place, namely Mr. Lépine and two other hosts, the Council is not convinced that this commitment will be met. The Commission also doubts the licensee's understanding of what can be considered local programming, as defined in paragraph 207 of Broadcasting Public Notice 2006-158.
93. Given that holding a broadcasting licence is a privilege, broadcasters are required to adhere at all times to a number of regulatory requirements and conditions of licence in order to operate a radio station. In this context, when called to a hearing, a responsible licensee would have understood the seriousness of the situation and the Commission's warnings, and it would have taken all the necessary steps to correct the situation as quickly as possible. A responsible licensee would at least have complied with the commitments made during the public hearing and the station's majority stakeholder would have appeared at the hearing to defend and explain the licensee's actions. In this case, the station's majority shareholder chose not to appear at the public hearing to respond to the concerns raised by the non-compliance and explain why the station's licence should be renewed.

Conclusion

94. The licensee's history shows several instances of non-compliance over the course of four consecutive licence terms, often with regard to the same regulatory requirements. This demonstrated that the licensee does not take seriously the regulatory requirements, its conditions of licence or the Commission's mandatory orders.
95. Despite the Commission's numerous warnings, the licensee continued to be non-compliant, and its behaviour grew even worse. The current instances of non-compliance are not isolated incidents but serious and recurring instances of non-compliance. Accordingly, the Commission is not convinced that a change will

occur in the licensee's behaviour in relation to its regulatory obligations, as no action from the licensee demonstrated a willingness to comply with its regulatory obligations.

96. The Commission considered all of the regulatory measures available to it to ensure that the licensee adheres to its obligations, including the imposition of conditions of licence or mandatory orders, the granting of a short-term renewal, and the suspension of CFOR-FM's broadcasting licence.
97. In light of the severity and recurrence of the current instances of the current non-compliance; of the station's history and the licensee's actions, which clearly demonstrate its poor understanding of its conditions of licence and regulatory obligations, or a lack of willingness to respect them; of the licensee's demonstrated inability to implement the necessary measures to ensure compliance; and of its disregard for the Commission's authority and for its responsibilities as a broadcaster, the Commission is not convinced that the imposition of conditions of licence or of mandatory orders, a suspension or a short-term renewal would be effective measures to ensure the licensee's compliance with the regulatory requirements. Accordingly, the Commission finds that not renewing the licence is the only appropriate measure in the circumstances.
98. In light of all of the above, the Commission **denies** the application by 9116-1299 Québec inc. to renew the broadcasting licence for the French-language commercial radio programming undertaking CFOR-FM Maniwaki, Quebec. Accordingly, the licence will expire at midnight on 31 August 2020 and, as of this date, the licensee will have to cease operation of this station.
99. A copy of this decision will be sent to Innovation, Science and Economic Development Canada to inform them of the situation and terminate the broadcasting licence.
100. The Commission invites all interested parties to file an application to obtain a broadcasting licence to operate a radio station to serve the population of Maniwaki. Any applications received will be assessed on their own merits.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2020-75, 26 February 2020
- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2019-194, 3 June 2019
- *CFOR-FM Maniwaki – Licence renewal and issuance of a mandatory order*, Broadcasting Decision CRTC 2018-231 and Broadcasting Order 2018-232, 10 July 2018

- *CFOR-FM Maniwaki – Licence renewal*, Broadcasting Decision CRTC 2015-324, 21 July 2015
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Various commercial radio programming undertakings – Licence renewals*, Broadcasting Decision CRTC 2012-703, 21 December 2012
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Obligation relating to the electronic filing of applications and use of Commission forms*, Broadcasting and Telecom Information Bulletin CRTC 2010-453-1, 23 December 2010
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006