



## Broadcasting Decision CRTC 2020-308 and Broadcasting Orders CRTC 2020-309, 2020-310 and 2020-311

PDF version

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

Ottawa, 27 August 2020

**CPAM Radio Union.com inc.**  
Montréal, Quebec

*Public record for this application: 2019-0732-0  
Virtual public hearing in the National Capital Region  
16 June 2020*

### **CJWI Montréal – Licence renewal and issuance of mandatory orders**

*The Commission **renews** the broadcasting licence for the French-language commercial AM ethnic radio station CJWI Montréal, Quebec from 1 September 2020 to 31 August 2022. This short-term renewal will allow for an earlier review of the licensee's compliance with its regulatory requirements.*

#### **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 whose licences expire 31 August 2020 to submit a renewal application to continue their operations after this date.
3. In response to this notice, CPAM Radio Union.com inc. (CPAM) filed an application to renew the broadcasting licence for the French-language commercial AM ethnic radio station CJWI Montréal, Quebec, which expires 31 August 2020.

#### **Interventions and reply**

4. The Commission received four interventions in opposition to the application. The interveners indicated that the programming of the French-language commercial

station CJMS Saint-Constant<sup>1</sup> is rebroadcast on CJWI. Further, they submitted that the station has been in regulatory non-compliance for several consecutive licence terms, which is unfair to broadcasters who are adhering to the *Radio Regulations, 1986* (the Regulations) and their conditions of licence. The interveners also submitted that the station is often off-air.

5. In reply to the interventions, the licensee indicated that the station adheres to the percentage of programming authorized by the Commission. It added that the station faces multiple technical issues that result in periods during which the station is off the air but that it has taken measures to rectify the technical issues, including hiring an engineering firm to perform final performance tests on CJWI. Further, the licensee submitted that it corrected several irregularities and that the remaining issues relating to the station's performance assessment are the result of technical errors or lack of understanding by the station's team.

## **Background**

6. In Broadcasting Decision 2008-335, the Commission renewed CJWI's licence from 1 January 2009<sup>2</sup> to 31 August 2015. In that same decision, the Commission found the licensee in non-compliance with section 9(2) of the Regulations relating to the filing of annual returns by no later than 30 November of each year for the 2006-2007 broadcast year.
7. In Broadcasting Decision 2015-409, the Commission renewed CJWI's licence for a short term, from 1 September 2015 to 31 August 2017. In that same decision, the Commission found the licensee in regulatory non-compliance and that it did not adhere to:
  - section 9(2) of the Regulations, which relates to the filing of annual returns by no later than 30 November of each year for the 2008-2009 through 2012-2013 broadcast years; and
  - section 15(2) of the Regulations, which relates to contributions to Canadian content development (CCD) for the 2008-2009 through 2012-2013 broadcast years.
8. The Commission noted that it was the second consecutive licence term during which CJWI was in non-compliance and, considering the severity and the recurrence of the non-compliance, the Commission required the licensee to make a CCD contribution of \$2,500 over-and-above that required under the Regulations. The Commission also required the licensee to broadcast, three times a day for five consecutive days, an on-air announcement regarding its non-compliance.

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<sup>1</sup> The licensee of CJMS is Groupe Médias Pam inc., which is held and controlled by its sole shareholder Mr. Jean-Ernest Pierre. He is also the sole shareholder of CPAM and holds the effective control.

<sup>2</sup> In Broadcasting Decision 2008-245, the Commission administratively renewed the broadcasting licence for CJWI from 1 September 2008 to 31 December 2008.

9. Finally, in Broadcasting Decision 2018-168, the Commission renewed CJWI's licence for a short term, from 1 September 2018 to 31 August 2020.<sup>3</sup> In that same decision, the Commission found the licensee in regulatory non-compliance and that it did not adhere to:
- section 9(2) of the Regulations relating to the filing of complete annual returns, including the financial statements and form 1411 (annual survey on National Public Alerting System) by no later than 30 November of each year for the 2013-2014 through 2015-2016 broadcast years;
  - section 9(4) relating to the requirement to respond to all requests for information relating to adherence to its regulatory obligations;
  - sections 8(1), 8(2), 8(4), 8(6) and 9(3)(b) relating to the keeping and filing of complete program logs, a clear and intelligible audio recording or other exact copy of all matter broadcast, as well as adequate music lists;
  - its condition of licence 5 relating to over-and-above CCD contributions and the filing of proof of payment to that effect; and
  - its conditions of licence 6(a) and (b) relating to the broadcast of an announcement following the failure to comply with certain regulatory requirements and to demonstrate that the announcement was broadcast by filing audio recordings with the Commission.
10. In that same decision, the Commission once again required the licensee to broadcast, three times a day for five consecutive days, an announcement regarding its non-compliance. The Commission also issued the three following broadcasting mandatory orders:
- Broadcasting Mandatory Order 2018-169 relating to sections 8(1), 8(4), 8(6) and 9(3)(b) of the Regulations;
  - Broadcasting Mandatory Order 2018-170 relating to section 9(2) of the Regulations;
  - Broadcasting Mandatory Order 2018-171 relating to section 9(4) of the Regulations.
11. Further, the Commission noted that given the recurrence of the licensee's non-compliance over multiple licence terms and its apparent lack of cooperation, the Commission was concerned with the licensee's ability to operate the station in a compliant manner. The Commission also noted that, should the licensee again breach the regulatory requirements to which it is subject, including the mandatory

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<sup>3</sup> In Broadcasting Decision 2017-224, the Commission administratively renewed CJWI's licence until 31 August 2018.

orders, the Commission would consider the suspension, non-renewal or revocation of the broadcasting licence under sections 9 and 24 of the Act.

## **Non-compliance**

12. In Broadcasting Notice of Consultation 2020-75 (the Notice), 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 no later than 30 November of each year, for the 2018-2019 broadcast year;
  - Broadcasting Mandatory Order 2018-170 relating to the requirement to comply at all times with section 9(2) of the Regulations;
  - section 9(3)(a) of the Regulations relating to the filing of a complete and accurate self-assessment report;
  - section 9(3)(b) of the Regulations relating to the filing of a complete and accurate music list;
  - Broadcasting Mandatory Order 2018-169 relating to the requirement to comply at all times with section 9(3)(b) of the Regulations; and
  - for the 7 to 13 July 2019 broadcast week, the following conditions of licence set out in Appendix 1 to Broadcasting Decision 2018-168:
    - condition of licence 4(a). requiring the licensee to devote a maximum of 30% of musical selections that it broadcasts to selections from content category 2 (Popular music);
    - condition of licence 4(a)(ii) requiring the licensee to devote a maximum of 15% of all content category 2 musical selections that it broadcasts to French-language vocal music selections;
    - condition of licence 4(b) requiring the licensee to devote at least 70% of the musical selections that it broadcasts to musical selections from content subcategory 33 (World beat and international); and
    - condition of licence 4(b)(i) requiring the licensee to devote at least 35% of all musical selections from content subcategory 33 that it broadcasts to Canadian selections.
13. In the Notice, the Commission called the licensee to the 16 June 2020 virtual public hearing to discuss these apparent severe and, in certain cases, repeated instances of non-compliance. The Commission also noted the concerns raised in Broadcasting Decision 2018-168 and reiterated that the recurring nature of the instances of non-compliance as well as the non-compliance with the mandatory orders, are clearly indicative of the licensee's unwillingness to comply with its regulatory obligations. The Commission expressed concerns regarding the licensee's ability to

continue operating the station. Further, in light of the warning in Broadcasting Decision 2018-168 relating to the imposition of more severe measures in the next licence renewal, the Commission noted in the Notice that should the licensee again breach the regulatory requirements, including the mandatory orders, it would consider the possibility of suspending, not renewing or revoking CJWT's licence under sections 9 and 24 of the Act.

### **Filing of annual returns**

14. 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.
15. 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, by no later than 30 November of a given year for the broadcast year ending the previous 31 August. The specific filing requirements are set out in Broadcasting Information Bulletin 2011-795.
16. In Broadcasting Decision 2018-168, the Commission issued Broadcasting Mandatory Order 2018-170 requiring the licensee to comply at all times with section 9(2) of the Regulations because it breached section 9(2) during several consecutive licence terms.
17. The licensee filed its annual return for the 2018-2019 broadcast year on time, but it was incomplete. Specifically, certain financial statement forms were incomplete.
18. In a clarification letter dated 27 January 2020, the Commission asked the licensee to comment on the circumstances leading to the apparent non-compliance. In its reply dated 4 February 2020, the licensee indicated that according to the accountant who prepared and verified the documents to file with the Commission, the return was complete. Given that the electronic non-transmission of the missing files was because they were too large, the licensee submitted another file on 3 February 2020.
19. At the public hearing, the licensee stated that it created a review committee that going forward will double check the annual returns to avoid errors and that the manager's assistant would be responsible for sending the annual returns. The licensee agreed to the imposition of a mandatory order relating to section 9(2) of the Regulations.

### **Commission's analysis and decision**

20. 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 their 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 effectively the broadcasting industry. 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 necessary to achieve and maintain compliance.

21. The Commission acknowledges that the non-compliance in relation to the filing of annual returns for the 2018-2019 broadcast year is related to the fact that the attachments were incomplete. However, during CJWI's last licence renewal, the Commission noted, in Broadcasting Decision 2018-168, that the authorized representative would now be responsible for reviewing all the documents produced by the bookkeeper to ensure that they are filed with the Commission in a timely manner. Nevertheless, the CJWI employee who made this commitment in 2018 and who was responsible for the annual returns during the last licence term admitted at the public hearing that she did not open the attachments to ensure that they were complete. The licensee proposed the same solution during the public hearing than it did in the last licence renewal although it was unable to meet its commitment.
22. 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 and that it is in breach of Broadcasting Mandatory Order 2018-170 set out in Appendix 4 to Broadcasting Decision 2018-168.

#### **Radio monitoring materials**

23. Pursuant to section 10(1)(i) of the Act, the Commission also made sections 9(3)(a) and 9(3)(b) of the Regulations, which set out the requirements regarding the information to include in a station's self-assessment report and the information on the musical selections that the licensee must include in its musical list for any period specified by the Commission.
24. Moreover, in Broadcasting Decision 2018-168, the Commission issued Broadcasting Mandatory Order 2018-169 requiring the licensee to comply at all times with section 9(3)(b) of the Regulations.
25. As part of the licence renewal process for CJWI, the Commission assessed the station's programming for the broadcast week of 7 to 13 July 2019. The number of musical selections indicated in the station's self-assessment report differs from the number obtained from the list of musical selections. In addition, the list of musical selections was missing information and contained inaccurate information. More specifically, 12 musical selections were identified as "aired but not listed" and four musical selections were identified as "listed but not aired."
26. In a letter to the Commission dated 30 September 2019, the licensee stated that certain songs that it considered to be Canadian (categories 2 and 3) were not taken into consideration by the Commission. In addition, the licensee missed certain songs when compiling the self-assessment report because of a problem with the software used.
27. Regarding the missing or inaccurate information, the licensee stated that this error was caused by the software used, which does not provide all the information on some of the musical selections that are broadcast. In some cases, the software would

not allow the songs in question to be listened to or their titles to be displayed. Nevertheless, the Commission was able to listen to them. In addition, during the program, the host shut off the sound so that the music could not be heard by the audience even though it continued to play.

28. In a letter to the Commission dated 4 February 2020, the licensee maintained that all of the stakeholders at the station had been informed that selections that are not broadcast should not be included in the self-assessment report. The licensee added that continuing education sessions would be provided to all stakeholders as of March 2020.
29. During the public hearing, the licensee indicated that the employee training that was included as a proposed measure during the previous renewal was not held because of a lack of understanding, which the licensee wanted to rectify before conveying the information to the hosts. In addition, the licensee did not yet understand and had not yet identified the technical nature of the problem. The COVID-19 pandemic also delayed the training sessions. The licensee added that it would change the software and assign an individual to double-check the lead technician's work.

#### **Commission's analysis and decision**

30. Adherence to the requirements relating to the filing of complete and accurate program logs and self-assessment reports is indispensable for to the Commission to monitor a station's performance and to verify its compliance with the Regulations and its conditions of licence. Further, when the material filed contains inconsistencies, this hinders 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.
31. Despite the explanations provided and the measures proposed during the hearing, the Commission is of the view that the licensee could have taken concrete measures during the current licence term and well before the hearing to demonstrate its willingness to comply with its regulatory requirements related to monitoring materials and its programming-specific requirements. Instead, the licensee attempted to implement corrective measures only after the clarification letters were sent.
32. In addition, as the licensee stated, it had frequently received help from the Commission in the steps it had to take. Despite the ready availability of staff to help, the licensee waited until the last minute to make the effort required to adhere to its regulatory requirements. Despite receiving help from Commission staff, the licensee still breached section 9(3)(b) of the Regulations and the mandatory order in effect concerning section 9(3)(b).
33. In light of the above, the Commission finds the licensee in non-compliance with sections 9(3)(a) and 9(3)(b) of the Regulations. The Commission also finds the licensee in breach of Broadcasting Mandatory Order 2018-169, set out in Appendix 3 of Broadcasting Decision 2018-168, which requires that the licensee comply at all times with section 9(3)(b) of the Regulations.

#### **Programming requirements (condition de licence 4)**

34. Pursuant to section 10(1)(a) of the Act, which states that the Commission may, by regulation, set the proportion of time that shall be devoted to the broadcasting of Canadian programs and in accordance to section 3(1)(e) and 3(1)(s)(i), which declare that each element of the Canadian broadcasting system must contribute to the creation and presentation of Canadian programming, the Commission imposed on the licensee requirements relating to the broadcast of Canadian programs. In the case of CJWI, the Commission amended these requirements in accordance with its authority to impose conditions of licence related to the circumstances of the licensee pursuant to section 9(1).
35. Pursuant to condition of licence 4 set out in Appendix 1 to Broadcasting Decision 2018-168, the licensee must comply with the following musical programming broadcasting requirements:
  4. As an exception to sections 2.2(3) to 2.2(10) of the *Radio Regulations, 1986*, the licensee shall in each broadcast week:
    - a. devote a maximum of 30% of the musical selections that it broadcasts to selections from content category 2 (Popular music);
      - i. the licensee shall devote at least 35% of all category 2 musical selections that it broadcasts to Canadian selections;
      - ii. the licensee shall devote a maximum of 15% of all category 2 musical selections that it broadcasts to French-language vocal music selections and a maximum of 15% of all category 2 musical selections to English-language vocal musical selections.
    - b. devote at least 70% of the musical selections that it broadcasts to musical selections from content subcategory 33 (World beat and international);
      - i. the licensee shall devote at least 35% of all musical selections from subcategory 33 that it broadcasts to Canadian musical selections.
36. CJWI is a commercial AM ethnic French-language station in Montréal. It offers programming targeting to the French-speaking Haitian, Latin-American and African ethnocultural communities in the Greater Montréal Area.
37. Following the week-long performance evaluation carried out from 7 to 13 July 2019, the Commission identified instances of apparent non-compliance relating to the licensee's condition of licence 4. More specifically, the licensee broadcast:
  - 31.32% of musical selections from content category 2 (condition of licence 4(a));
  - 25.6% of French-language vocal music selections from category 2 (condition of licence 4(a)(ii));

- 68.68% of musical selections from subcategory 33 (condition of licence 4(b)); and
  - 15.8% of Canadian musical selections from subcategory 33 (condition of licence 4(b)(i)).
38. In a letter to the Commission dated 30 September 2019, the licensee stated that the software it used did not always allow it to see the titles of the selections broadcast or to hear them. The licensee also admitted to having a poor understanding of the definitions of the Commission's categories and subcategories of musical selections, which affected the results.
39. During the hearing, the licensee indicated that, after several discussions with Commission staff, it now had a good level of understanding and knowledge of its regulatory obligations and its conditions of licence. The licensee also committed to not only arranging training, but also to creating a document that it will post in the studios to provide the Commission's definition for each category of musical selection. The licensee added that it would establish a team of supervisors to listen to the musical selections broadcast, to ensure the compliance of each program with the required percentage of selections.

#### **Commission analysis and determination**

40. As the licensee's replies above demonstrate, the Commission notes that the licensee openly admits to having had a limited understanding of its regulatory obligations for broadcasting musical selections from content category 2 (Popular music) and subcategory 33 (World beat and international).
41. However, after listening to the licensee at the hearing, the Commission acknowledges that although the licensee's efforts were belated, it did communicate with Commission staff multiple times to receive clarifications on its musical selection obligations. The Commission notes that the licensee now seems to have a better understanding of the nature of the music categories and how to correctly compile them. During the public hearing, the licensee also stated multiple times that it would reach out to Commission staff to verify its knowledge if there were any doubts.
42. In light of the above, the Commission finds the licensee in non-compliance with its conditions of licence 4(a), 4(a)(ii), 4(b) and 4(b)(i), set out in Appendix 1 to Broadcasting Decision 2018-168. The Commission also imposes conditions of licence, set out in Appendix 1 of this decision, requiring that the licensee make additional contributions to Canadian content development.

#### **Broadcasting certificate**

43. Pursuant to section 22 of the *Broadcasting Act*, no licence shall be issued, amended or renewed, subject to this Part, if the licence is in contravention of a direction to the Commission issued by the Governor in Council under section 26(1) and, subject to section (2), unless the Minister of Industry certifies to the Commission that the applicant has satisfied the requirements of the *Radiocommunication Act* and the

regulations made under that act and has been or will be issued a broadcasting certificate with respect to the radio apparatus that the applicant would be entitled to operate under the licence.

44. On 17 June 2020, no proof of performance for the station CJWI was submitted to the Department of Innovation, Science and Economic Development Canada (ISED). The licensee has therefore been operating a station with ISED's temporary authorization until 1 August 2020. In a letter dated 10 July 2020, ISED extended the special authorization to operate CJWI until 31 December 2020. Pursuant to section 22 of the Act, the broadcasting licence will become of no force or effect should the broadcasting certificate issued by the Department of Industry expire, as it is currently set to do on 31 December 2020.

### **Regulatory measures**

45. 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 made by the licensee and the steps taken to rectify the situation are also considered.
46. This is the fourth consecutive licence term during which the licensee has been found in non-compliance, as well as the fourth consecutive term during which it is in non-compliance regarding the filing of complete annual returns. This is also the second consecutive term during which the licensee is in non-compliance with section 9(3)(b) of the Regulations relating to the filing of complete and accurate music lists, and the first instance of non-compliance with section 9(3)(a) relating to the filing of a complete and accurate self-assessment report as well as with condition of licence 4(a), 4(a)(ii), 4(b) and 4(b)(ii).
47. Furthermore, the licensee breached two of the three mandatory broadcasting orders issued in the last licence renewal, namely:
  - Broadcasting Mandatory Order 2018-169 relating to section 9(3)(b) of the Regulations (filing of a complete and accurate music list);
  - Broadcasting Mandatory Order 2018-170 relating to section 9(2) of the Regulations (annual return).
48. The Commission considers that the fact that this previous commitment was not fulfilled or successful demonstrates a flagrant lack of responsibility on the part of the licensee, especially since the licensee was required to comply with sections 9(2) and 9(3)(b) of the Regulations pursuant to mandatory orders. When it issues such an order, the Commission expects the licensee to implement measures, to take concrete action and to make every effort necessary to ensure that such a non-compliance does not reoccur. Breaching a mandatory order issued by the Commission is a severe non-compliance.

49. In Broadcasting Decision 2018-168, the Commission warned the licensee that should it again breach regulatory requirements, including the mandatory order, the Commission would consider the suspension, revocation or non-renewal of the licence under sections 9 and 24 of the Act. As the Commission explained to the licensee at the hearing, breaching a mandatory order issued by the Commission carries a number of implications for the licensee and could lead to legal proceedings for contempt of court in the Federal Court.
50. Given that the licensee is currently the owner of two commercial radio stations,<sup>4</sup> that the licensee has operated the station CJWI since 2001<sup>5</sup> and that the licensee has been subject to many licence renewal processes, the Commission is of the view that the licensee's failure to understand the nature and scope of its obligations for broadcasting musical selections from content category 2 and subcategory 33, despite the many discussions on that subject that it had with Commission staff, once again demonstrates that the licensee seems to lack both the willingness and the knowledge required to operate the station in compliance.
51. In addition, this condition of licence was imposed in the station's first licence term (condition of licence 3 in Broadcasting Decision 2001-678) in order to contribute to the diversity of music formats in the Montréal market. Accordingly, the licensee should, by now, be in a position to well understand this condition.
52. The licensee received several warnings from the Commission and had several discussions with Commission staff to guide it towards compliance with its obligations. The Commission notes that the licensee could have put measures in place before it came to this point.
53. However, after hearing the licensee during the public hearing, the Commission acknowledges that, despite its belated efforts, the licensee contacted Commission staff many times to obtain clarifications on its music programming obligations. The Commission notes that the licensee appears to now better understand the nature of the music categories and the appropriate manner to compile them. Further, the licensee mentioned multiple time to the Commission during the public hearing that it, if in doubt, it would contact the Commission to verify its understanding.
54. Although the licensee has a history of severe and repeated non-compliance, it demonstrated a willingness to continue operating CJWI in compliance and proposed additional corrective measures to try to comply with its obligations.
55. The Commission still doubts that the licensee understands some of its obligations but it expects the licensee to take the initiative to reach out to Commission staff more quickly when in doubt about its obligations. Accordingly, following discussions and explanations obtained during its appearance at the public hearing,

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<sup>4</sup> Jean-Ernest Pierre is the sole shareholder effectively controlling CPAM Radio Union.com inc., and Groupe Médias Pam inc., the respective licensees of CJWI Montréal and CJMS Saint-Constant. The Commission approved Groupe Médias Pam inc.'s application to acquire the assets of the commercial radio station CJMS Saint-Constant in Broadcasting Decision 2014-641. The Commission nevertheless notes that the licence renewal application for the French-language commercial radio station CJMS Saint-Constant was denied in Broadcasting Decision CRTC 2020-239.

<sup>5</sup> Broadcasting Decision 2001-678

the Commission considers it appropriate to renew the licence for a short term of two years. This short-term renewal will allow for an earlier review of the licensee's compliance with its regulatory requirements.

56. However, in light of the severity and recurrence of the non-compliance, the Commission finds it appropriate to require the licensee to broadcast an announcement regarding its non-compliance three times a day for five consecutive business days within the 14-day period following 1 September 2020, the beginning of the new licence term. To confirm adherence to this requirement, the licensee must file with the Commission the audio recordings for the broadcast days during which the announcement was broadcast in its entirety as written, as well as a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CJWI Montréal*, 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.
57. When a licensee does not adhere to its requirements relating to the broadcast of Canadian content, harm may be caused to the broadcasting system in the form of lost exposure and royalty payments. In Broadcasting Information Bulletin 2014-608, the Commission indicated that, in cases of non-compliance relating to programming, it could, in specific circumstances, require licensees of radio stations deemed to be in non-compliance to make additional CCD contributions over-and-above those set out in the Regulations and in their existing conditions of licence, or to make all future CCD contributions to funds such as FACTOR, MUSICACTION or the Community Radio Fund of Canada as opposed to discretionary initiatives such as artist competitions.
58. In light of the severity of the non-compliance relating to Canadian music, the Commission considers it appropriate to require CJWI to make, by no later than **30 September 2020**, an additional CCD contribution over-and-above that provided for in the Regulations or by condition of licence. This is a compensatory measure for the harm caused to the broadcasting system by this non-compliance. Given CJWI's annual revenue and in light of the severity of the non-compliance, the Commission considers it appropriate to require an additional contribution of \$2,836. A **condition de licence** to that effect is set out in Appendix 1 to this decision.
59. In addition, for the same reasons as mentioned above, pursuant to section 12(2) of the Act, the Commission issues mandatory orders requiring CPAM Radio Union.com inc. to comply at all times with the following:
  - section 9(2) of the Regulations relating to the requirement to file complete annual returns;
  - sections 9(3)(a) and 9(3)(b) of the Regulations relating to the filing of a complete and accurate self-assessment report and the filing of a complete and accurate music list; and
  - its conditions of licence 4(a), 4(a)(ii) and 4(b)(i) relating to its programming requirements.

60. The mandatory orders requiring compliance with the above-noted sections of the Regulations are set out in appendices 3, 4 and 5 to this decision.
61. Pursuant to section 13 of the Act, the mandatory orders will be filed with the Federal Court and will become orders of that court.
62. Further, the Commission considers that it has imposed the maximum of penalties to enable the licensee to comply with its obligations and that if the licensee is found again in non-compliance with requirements during the next licence term, the Commission will have no choice but to consider other solutions.

## **Conclusion**

63. In light of all of the above, the Commission **renews** the broadcasting licence for the French-language ethnic commercial AM radio programming undertaking CJWI Montréal from 1 September 2020 to 31 August 2022. This short-term renewal will allow for an earlier review of the licensee's compliance with regulatory requirements. The licensee shall adhere to the **conditions of licence** set out in Appendix 1 to this decision.
64. Given the recurring nature of the instances of non-compliance over multiple licence terms and the licensee's apparent lack of cooperation, the Commission is concerned about the licensee's ability and commitment to operate the station in a compliant manner. Should the licensee again breach regulatory requirements, including the mandatory orders, the Commission will have no choice but to consider the non-renewal, suspension or revocation of the broadcasting licence under sections 9 and 24 of the Act.

## **Reminders**

65. The Commission emphasizes the importance it places on a licensee's adherence to regulatory requirements. The onus is on the licensee to ensure that it is aware of and adheres to the regulatory requirements at all times. The short-term licence renewal granted in this decision will allow for an earlier review of the licensee's compliance with the Regulations.
66. Licensees are responsible for filing their complete annual returns, including the financial statements, on time. Moreover, as set out in Broadcasting Information Bulletin 2011-795, the onus is on licensees to ensure that all of the appropriate forms and documents are attached to their annual returns and to contact the Commission if more clarifications are needed.
67. Adherence to the requirements related to the filing of complete and accurate recordings with the Commission to monitor the performance of a station and verify its compliance with the Regulations and its conditions of licence. This requirement applies to all stations, community or commercial, regardless of the size of the market. Further, when the material filed includes inconsistencies, this hinders 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.

68. Pursuant to section 22 of the Act, the broadcasting licence will become of no force or effect should the broadcasting certificate issued by the Department of Industry expire, as it is currently set to do on 31 December 2020.

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
- *CJWI Montréal – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2018-168 and Broadcasting Orders CRTC 2018-169, 2018-170 and 2018-171, 18 May 2018
- *Various radio stations – Administrative renewals*, Broadcasting Decision CRTC 2017-224, 29 June 2017
- *CJWI Montréal – Licence renewal*, Broadcasting Decision CRTC 2015-409, 31 August 2015
- *CJMS Saint-Constant – Acquisition of assets, licence renewal and maintaining of broadcasting orders*, Broadcasting Decision CRTC 2014-641 and Broadcasting Orders CRTC 2014-642 and 2014-643, 11 December 2014
- *Update on the Commission’s approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009
- *CJWI Montréal – Licence renewal*, Broadcasting Decision CRTC 2008-335, 1 December 2008
- *Administrative renewals*, Broadcasting Decision CRTC 2008-245, 29 August 2008
- *New ethnic AM radio station*, Decision CRTC 2001-678, 7 November 2001

## **Appendix 1 to Broadcasting Decision CRTC 2020-308**

### **Terms, conditions of licence and encouragement for the French-language ethnic commercial AM radio programming undertaking CJWI Montréal, Quebec**

#### **Terms**

The licence will take effect 1 September 2020 and expire 31 August 2022.

#### **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 is exempted from the requirement set out in section 7(2) of the *Radio Regulations, 1986* that it devote 50% of its programming to third-language programs.
3. The licensee shall devote at least 90% of its programming in each broadcast week to French-language ethnic programming targeting the Haitian, Latin-American and African communities with French as a first or second language. The remaining 10% of its programming may be in third languages, i.e. in languages other than French, English or an Indigenous language.
4. As an exception to sections 2.2(3) to 2.2(10) of the *Radio Regulations, 1986*, the licensee shall in each broadcast week:
  - a) devote a maximum of 30% of the musical selections that it broadcasts to selections from content category 2 (Popular music);
    - i. the licensee shall devote at least 35% of all category 2 musical selections that it broadcasts to Canadian selections;
    - ii. the licensee shall devote a maximum of 15% of all category 2 musical selections that it broadcasts to French-language vocal music selections and a maximum of 15% of all category 2 musical selections to English-language vocal musical selections.
  - b) devote at least 70% of the musical selections that it broadcasts to musical selections from content subcategory 33 (World beat and international);
    - i. the licensee shall devote at least 35% of all musical selections from subcategory 33 that it broadcasts to Canadian selections.
5. 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 14-day period following 1 September 2020, the beginning of the new licence term:

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 2020-308, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986*. The instances of non-compliance are a recurring issue. CJWI has put measures in place to ensure that the instances of non-compliance 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*, set out in Appendix 2 to *CJWI Montréal – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2020-308, 27 August 2020 by no later than 14 days following the final broadcast of the announcement.

6. The licensee shall, by no later than 30 September 2020, make a contribution to Canadian content development (CCD) of \$2,836 that is over and above any CCD contributions required pursuant to the *Radio Regulations, 1986*. This contribution shall be allocated as follows:

- 45% to FACTOR or MUSICACTION;
- 40% to any eligible initiative as set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006; and
- 15% to the Community Radio Fund of Canada.

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 to FACTOR, MUSICACTION or the Community Radio Fund of Canada.

### **Encouragement**

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

## Appendix 2 to Broadcasting Decision CRTC 2020-308

### Attestation as to the broadcast of the non-compliance announcement on CJWI Montréal

In regard to the requirements set out in condition of licence 5 in Appendix 1 to *CJWI Montréal – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2020-308, 27 August 2020, I, \_\_\_\_\_ (NAME), on behalf of \_\_\_\_\_ (LICENSEE), certify that the announcement regarding CJWI Montréal'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 14-day period immediately following 1 September 2020, the beginning of the new licence term, as follows:

<b>First date of broadcast</b>	-	Time	1:	2:	3:
<b>Second date of broadcast</b>	-	Time	1:	2:	3:
<b>Third date of broadcast</b>	-	Time	1:	2:	3:
<b>Fourth date of broadcast</b>	-	Time	1:	2:	3:
<b>Fifth date of broadcast</b>	-	Time	1:	2:	3:

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Signature

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Date

## **Appendix 3 to Broadcasting Decision CRTC 2020-308**

### **Broadcasting Mandatory Order CRTC 2020-309**

Pursuant to section 12(2) of the *Broadcasting Act*, the Commission hereby orders CPAM Radio Union.com inc., licensee of CJWI Montréal, to comply at all times during the term of the licence granted in *CJWI Montréal – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2020-308, 27 August 2020, with the requirement set out in section 9(2) of the *Radio Regulations, 1986*, which read 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.

## **Appendix 4 to Broadcasting Decision CRTC 2020-308**

### **Broadcasting Mandatory Order CRTC 2020-310**

Pursuant to section 12(2) of the *Broadcasting Act*, the Commission hereby orders CPAM Radio Union.com inc., licensee of CJWI Montréal, to comply at all times during the term of the licence granted in *CJWI Montréal – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2020-308, 27 August 2020, with the requirements set out in sections 9(3)(a) and 9(3)(b) of the *Radio Regulations, 1986*, which read as follows:

9(3) At the request of the Commission, a licensee shall submit for any period specified by the Commission in its request

- (a) the information required by the Station Self-assessment Report set out in Schedule 2; and
- (b) a list of the musical selections in the order in which they are broadcast by the licensee during that period that includes the title and performer of each musical selection and a legend that identifies
  - (i) any Canadian musical selection,
  - (ii) any hit,
  - (iii) any instrumental selection,
  - (iv) any content category 3 musical selection, and
  - (v) the language of the musical selection, where the musical selection is not an instrumental selection.

## **Appendix 5 to Broadcasting Decision CRTC 2020-308**

### **Broadcasting Mandatory Order CRTC 2020-311**

Pursuant to section 12(2) of the *Broadcasting Act*, the Commission hereby orders CPAM Radio Union.com inc., licensee of CJWI Montréal, to comply at all times during the term of the licence granted in *CJWI Montréal – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2020-308, 27 August 2020, with the requirement set out in conditions of licence 4(a), 4(a)(ii), 4(b) and 4(b)(i), which read as follows:

4. As an exception to sections 2.2(3) to 2.2(10) of the *Radio Regulations, 1986*, the licensee shall in each broadcast week:
  - a. devote a maximum of 30% of the musical selections that it broadcasts to selections from content category 2 (Popular music);
    - ii. the licensee shall devote a maximum of 15% of all category 2 musical selections that it broadcasts to French-language vocal music selections and a maximum of 15% of all category 2 musical selections to English-language vocal musical selections.
  - b. devote at least 70% of the musical selections that it broadcasts to musical selections from content subcategory 33 (World beat and international);
    - i. the licensee shall devote at least 35% of all musical selections from subcategory 33 that it broadcasts to Canadian selections.