



## Broadcasting Decision CRTC 2021-77

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Reference: Part 1 licence renewal application posted on 30 October 2020

Ottawa, 19 February 2021

**AGNI Communications inc.**  
Montréal, Quebec

*Public record for this application: 2019-0902-9*

### **CILO-FM Montréal – Licence renewal**

*The Commission **renews** the broadcasting licence for the ethnic commercial radio station CILO-FM Montréal from 1 March 2021 to 31 August 2024. This short-term licence 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 listed the radio stations for which the broadcasting licences would expire 31 August 2020 and therefore needed to be renewed to continue their operations. In that notice of consultation, the Commission requested that the licensees of those services submit renewal applications for their broadcasting licences.
3. In response, AGNI Communications inc. (AGNI) filed an application to renew the broadcasting licence for the commercial ethnic radio station CILO-FM Montréal, Quebec, which expires 28 February 2021.<sup>1</sup> The Commission did not receive any interventions in regard to the application.

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<sup>1</sup> The original licence expiry date for the station was 31 August 2020. The licence was administratively renewed until 28 February 2021 as a result of Broadcasting Decision 2020-284.

## **Non-compliance**

### **Annual returns**

4. 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.
5. Pursuant to this authority, the Commission set out section 9(2) of the *Radio Regulations, 1986* (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.
6. According to Commission records, the licensee filed the station's annual returns for the 2015-2016, 2016-2017 and 2017-2018 broadcast years on 31 March 2020. In addition, the financial statements were not included in the annual returns and have yet to be filed with the Commission.
7. The licensee submitted that there were some challenges in implementing the correct processes and putting in place the appropriate persons to ensure that required filings were made on time.
8. To ensure the station's compliance with this requirement, AGNI indicated that the station has hired a dedicated accounting firm and accountant in charge of ensuring that filings are done on time. The licensee added that the missing financial statements would be filed with the Commission by 31 March 2021.
9. In light of the above, the Commission finds the licensee in non-compliance with section 9(2) of the Regulations for the 2015-2016, 2016-2017 and 2017-2018 broadcast years.

### **Participation in the National Public Alerting System**

10. Section 10(1) of the Act authorizes the Commission to make regulations furthering its objects regarding the broadcasting of program. In Broadcasting Regulatory Policy 2014-444, the Commission reiterated that the broadcasting system has a vital role to play in the provision of emergency alert messages to Canadians and that the duty to inform the public of imminent perils is at the core of the public service obligations of all broadcasters.
11. The provision of emergency alert messages is achieved through Canada's National Public Alerting System (NPAS). In Broadcasting Regulatory Policy 2014-444, the Commission announced that it was requiring broadcasters to fully participate in the

NPAS and that by 31 March 2015, all broadcasters in Canada, with certain exceptions,<sup>2</sup> would be required to alert Canadians to imminent threats to life.

12. In this regard, and pursuant to the authority granted by section 10(1) of the Act, the Commission made section 16(2) of the Regulations, which specifies that except as otherwise provided under a condition of its licence, a licensee shall implement on all stations that it is licensed to operate, by no later than 31 March 2015, a public alerting system that broadcasts without delay, on a given station, any audio alert that it receives from the National Alert Aggregation and Dissemination System that (a) announces an imminent or unfolding danger to life; and (b) is designated by the applicable issuing authority for immediate broadcast in all or part of the area within the station's A.M. 5 mV/m contour, F.M. 0.5 mV/m contour or digital service area, as the case may be.
13. In Broadcasting Regulatory Policy 2014-444, the Commission announced amendments to various regulations, standard conditions of licence and certain exemption orders to require the mandatory distribution of emergency alert messages by broadcasting undertakings.
14. According to Commission records, the licensee did not implement the NPAS by the required deadline. Specifically, as part of its annual returns for the 2016-2017 and 2017-2018 broadcast years, AGNI indicated in the survey regarding the implementation of the NPAS that the system had not been installed.
15. The licensee submitted that following the retirement of the engineer in charge of the transmitter site, the implementation of the NPAS could not be completed. It also indicated that since it now has proper people and processes in place to ensure compliance, the NPAS would be installed by 30 June 2021.
16. In light of the above, the Commission finds the licensee in non-compliance with section 16(2) of the Regulations.

### **Canadian content development contributions**

17. Sections 3(1)(e) and (s) of the Act declare that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming and that private networks and programming 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. Consistent with these objectives and pursuant to its authority under section 9(1) of the Act, the Commission has imposed conditions of licence regarding contributions to Canadian content development (CCD).

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<sup>2</sup> Campus, community and Indigenous radio stations and television broadcasters, as well as radiocommunication distribution undertakings. For all of these undertakings, as noted in Broadcasting Regulatory Policy 2014-444, the deadline to implement the NPAS was 31 March 2016.

18. In Broadcasting Decision 2014-241, the Commission noted that AGNI proposed to make an over-and-above CCD contribution of \$14,000 over seven years, to be directed to new Canadian ethnic music and artists. As such, the Commission imposed the following condition of licence:

6. In addition to the basic annual contribution to Canadian content development set out in section 15 of the *Radio Regulations, 1986*, the licensee shall, upon commencement of operations, make an annual contribution of \$2,000 (\$14,000 over seven consecutive broadcast years) to the promotion and development of Canadian content. Of this amount, 20% per broadcast year shall be devoted to FACTOR or Musicaction. The remainder shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

19. The licensee reported no over-and-above CCD contribution for the 2015-2016 broadcast year. Further, it reported contributions of \$400 to FACTOR only during each of the 2016-2017 and 2017-2018 broadcast years. Consequently, the licensee incurred a shortfall of \$4,200.

20. In response to this issue, AGNI submitted that being a small start-up operation, it faced budget and payment challenges. It added that the station now has an accountant in charge of ensuring that contribution payments are made on time.

21. In its reply letter dated 19 October 2020, the licensee provided proof of payment for its over-and-above CCD contributions and confirmed that the minimum amounts have been paid. It nevertheless acknowledged that it was in non-compliance with its condition of licence given that it did not meet the required deadlines.

22. The Commission notes that the proof of payment shows that the licensee made a payment of \$1,600 to Musicaction in September 2019, which is accounted for in the 2019-2020 broadcast year. Following the review of the proof of payments filed by the licensee for the 2016-2017 and 2017-2018 broadcast years, the Commission determined that the CCD shortfall amounts to \$5,000, which should have been paid over the 2015-2016, 2016-2017 and 2017-2018 broadcast years.

23. The over-and-above CCD contribution was proposed by AGNI when it applied for a broadcasting licence to operate a new station as part of a competitive hearing. The Commission is not convinced that the licensee understands the requirement of its condition of licence relating to CCD contributions.

24. In light of the above, the Commission finds the licensee in non-compliance with condition of licence 6 set out in Appendix 1 to Broadcasting Decision 2014-241 relating to over-and-above CCD contributions.

## Regulatory measures

25. The Commission's approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2014-608. Under that approach, each instance of non-compliance is evaluated in its context and in light of factors such as the number, recurrence and seriousness of the instances of non-compliance. The circumstances leading to the non-compliance, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.
26. As set out in Broadcasting Regulatory Policy 2014-554, for licensees that are in non-compliance, and depending on the nature of the non-compliance, the Commission may apply, on a case-by case basis, measures such as renewing the licence for a short term; imposing additional conditions of licence; calling the licensee to a public hearing; issuing a mandatory order requiring the licensee to comply with regulatory requirements; or suspending, not renewing, or revoking the licence.
27. In regard to the licensee's non-compliance with section 9(2) of the Regulations, the Commission notes that the late filing of the annual returns is very severe in nature. The Commission notes that all annual returns since the station's launch, in March 2016, were filed late and that the financial statements are still missing. The Commission finds it appropriate to require the licensee to file the station's financial statements for the 2015-2016 through 2017-2018 broadcast years by no later than 31 March 2021. A **condition of licence** to that effect is set out in the appendix to this decision.
28. Participation in the NPAS ensures that radio stations across Canada notify listeners of alert messages issued by authorized officials for imminent emergencies, including events such as tornadoes, floods, forest fires, industrial disasters, tsunamis and other imminent or unfolding events posing danger to life. In regard to the present case, the Commission finds that the licensee's non-compliance relating to the implementation of the NPAS for CILO-FM to be very severe in nature, given that more than five years have passed since the 31 March 2015 deadline for commercial stations to implement the system. Given that the NPAS is still not operational for CILO-FM, the Commission considers that it would be appropriate to require the licensee to implement the NPAS on the station by no later than **20 May 2021**. A **condition of licence** to that effect is set out in the appendix to this decision. Additionally, the Commission notes that the licensee must include the NPAS system implementation date in Form 1411, which is submitted as part of its annual return.
29. In regard to over-and-above CCD contributions, the non-compliance resulted in a CCD shortfall of \$5,000, which represents almost one-third of the licensee's total CCD obligations. Further, as part of a competitive process through which AGNI was granted a broadcasting licence for CILO-FM, the licensee committed to levels of over-and-above CCD contributions to which it is now required to adhere by condition of licence. In addition, the licensee has not fulfilled its over-and-above CCD contributions obligations since its launch. Under the Commission's approach to non-compliance, the licensee may be imposed a condition of licence requiring it to pay an additional CCD contribution as a remedial measure for the harm caused to the

broadcasting system. When questioned on the possibility of imposing an additional CCD contribution of \$5,000, the licensee stated that this would not be appropriate as it was in the initial stages of launching a small station with a very small budget.

30. Although the broadcasting system has been deprived of these funds since the 2015-2016 broadcast year, the Commission notes that based on CILO-FM's financial performance, the imposition of an additional CCD contribution would not be appropriate in this case. However, the Commission finds it appropriate to require the licensee to make CCD contribution of \$5,000 by no later than 31 August 2021 to rectify its outstanding CCD contribution shortfalls. A **condition of licence** to that effect is set out in the appendix to this decision.
31. The Commission acknowledges the measures put in place by the licensee to avoid any future non-compliance. Nevertheless, given the seriousness of these instances of non-compliance, the Commission finds that it would be appropriate to renew the broadcasting licence for CILO-FM for a short-term period, which will allow for an earlier review of the licensee's compliance with its regulatory requirements.

## **Conclusion**

32. In light of all of the above, the Commission **renews** the broadcasting licence for the ethnic commercial radio programming undertaking CILO-FM Montréal, Quebec, from 1 March 2021 to 31 August 2024. The **conditions of licence** are set out in the appendix to this decision.

## **Remaining Canadian content development contributions**

33. As noted above, in Broadcasting Decision 2014-241, the Commission required AGNI, by condition of licence, to make, in addition to the basic annual contribution to CCD set out in section 15 of the Regulations, an annual over-and-above CCD contribution of \$2,000 (\$14,000 over seven consecutive broadcast years) to the promotion and development of Canadian content.
34. Based on this payment schedule, the licensee will have fulfilled its over-and-above CCD contribution requirement by the end of the 2021-2022 broadcast year, after which it will only be subject to the basic annual CCD contribution requirement set out in the Regulations. Accordingly, the Commission considers it appropriate to re-impose the condition of licence that it originally imposed on CILO-FM in Broadcasting Decision 2014-241, but with modifications that reflect the remaining broadcast years during which the licensee must make over-and-above CCD contributions and the pro-rated amount that it must contribute (i.e., since the licensee operated CILO-FM for only six months during the station's first year of operation, it must contribute \$1,000 for that first year). This **condition of licence** is set out in the appendix to this decision.

## **Reminders**

### **Annual returns**

35. Licensees are responsible for filing complete annual returns on time, including financial statements. As set out in Broadcasting Information Bulletin CRTC 2011-795, it is the licensee's responsibility to ensure that all appropriate forms and documentation are included with its annual returns, and to contact the Commission if further clarification is required.

### **National Public Alerting System**

36. The full participation of the broadcasting industry is important for the NPAS to be effective in safeguarding and warning Canadians. As such, the Commission considers that compliance must be enforced and station compliance in a timely manner will be closely monitored. The Commission could choose to apply other regulatory measures, such as those set out in Broadcasting Information bulletin 2014-608, should the requirements with respect to the NPAS not be fulfilled.

### **Canadian content development contributions**

37. It is important that radio station licensees make their required contributions to CCD, given that CCD initiatives not only help to develop and advance the careers of emerging Canadian artists, but increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. The non-payment of CCD contributions therefore has the potential to cause harm to the Canadian broadcasting system.
38. It is incumbent upon licensees to provide, by the required deadlines, proof of payment to such initiatives. Licensees must also provide sufficient documentation to support the eligibility of their contribution. Failure to do so may result in the Commission finding a contribution ineligible, which in turn may affect a station's compliance with regulatory obligations.

### **Force and effect of broadcasting licences**

39. Pursuant to section 22 of the Act, the broadcasting licence renewed in this decision will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry lapses.

Secretary General

### **Related documents**

- *Various radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2020-284, 21 August 2020
- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC

2019-194, 3 June 2019

- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders - Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014
- *Commercial ethnic radio stations in Montréal*, Broadcasting Decision CRTC 2014-241, 16 May 2014
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011

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

## Appendix to Broadcasting Decision CRTC 2021-77

### Terms, conditions of licence, expectation and encouragement for ethnic commercial radio broadcasting undertaking CILO-FM Montréal, Quebec

#### Terms

The licence will expire 31 August 2024.

#### Conditions of licence

1. The licensee shall adhere to the conditions set out in *Conditions of licence for commercial AM and FM radio station*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, with the exception of condition of licence 7, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. The licensee shall operate the station within the Specialty format as defined in *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995, and in *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010.
3. The licensee shall devote all of the programming broadcast each broadcast week to ethnic programs, as defined in the *Radio Regulations, 1986*.
4. The licensee shall devote all of the programming broadcast each broadcast week to third-language programs, as defined in the *Radio Regulations, 1986*.
5. The licensee shall offer on a weekly basis programming directed to a minimum of nine cultural groups in a minimum of six languages.
6. Pursuant to this decision and in order to fulfill its outstanding commitments to Canadian content development (CCD) set out in *Commercial ethnic radio stations in Montréal*, Broadcasting Decision CRTC 2014-241, 16 May 2014, the licensee shall, in addition to the basic annual contribution to (CCD) set out in section 15 of the *Radio Regulations, 1986*, make annual contributions of \$2,000 for each of the 2019-2020, 2020-2021 and 2021-2022 broadcast years, and \$1,000 for the 2021-2022 broadcast year (remaining CCD contributions from partial broadcast year in 2015-2016) (i.e., \$14,000 over seven consecutive broadcast years) to the promotion and development of Canadian content. Of this amount, 20% per broadcast year shall be devoted to FACTOR or Musicaction. The remainder shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.
7. The licensee shall, by no later than 31 August 2021, pay the shortfall contribution to Canadian content development (CCD) of \$5,000 that is over and above any CCD contributions required pursuant to the *Radio Regulations, 1986* and the CCD contributions set out in condition of licence 6. This CCD contribution shall be

allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

In addition, the licensee shall file, by 30 November 2021 and in a form deemed acceptable by the Commission, proof of payment regarding this 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.

8. In order to comply with the requirements set out in sections 16(2) and 16(3) of the *Radio Regulations, 1986* and *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014, the licensee shall implement the National Public Alerting System (NPAS) by no later than **20 May 2021**. As part of this requirement:
  - a. The licensee must file with the Commission a letter attesting to the implementation date of its NPAS within 14 days after the installation. In this letter, the licensee must confirm whether maintenance, testing and updating procedures have been adopted for its automated emergency alert message distribution equipment.
  - b. In addition, the licensee must file with the Commission the results of its first NPAS tests, as scheduled by the relevant alerting authorities, within two weeks after the occurrence of such system tests.
9. The licensee shall file complete financial statements for the 2015-2016, 2016-2017 and 2017-2018 broadcast years by 31 March 2021.

### **Expectation**

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

### **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.