



Broadcasting Decision CRTC 2021-87

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

Ottawa, 23 February 2021

9238476 Canada Inc.
Salaberry-de-Valleyfield, Quebec

Public record for this application: 2019-0616-6

CKOD-FM Salaberry-de-Valleyfield – Licence renewal

*The Commission **renews** the broadcasting licence for the French-language commercial radio station CKOD-FM Salaberry-de-Valleyfield, Quebec, from 1 March 2021 to 31 August 2027.*

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 stations submit renewal applications for their broadcasting licences.
3. In response, 9238476 Canada Inc. (9238476 Canada) filed an application to renew the broadcasting licence for the French-language commercial radio station CKOD-FM Salaberry-de-Valleyfield, Quebec, which expires 28 February 2021.¹ The Commission did not receive any interventions in regard to this application.

Background

4. In Broadcasting Decision 2015-521, the Commission found 9238476 Canada in non-compliance with sections 9(4) and 15(2) of the *Radio Regulations, 1986* (the Regulations) relating to the requirement to reply to all Commission requests for information regarding adherence to regulatory obligations and regarding requirements

¹ The original licence expiry date for this station was 31 August 2020. The licence was administratively renewed from 1 September 2020 until 28 February 2021 as a result of Broadcasting Decision 2020-284.

relating to basic Canadian content development (CCD) contributions. The Commission therefore imposed a condition of licence requiring the licensee to fulfill unpaid CCD contribution amounts, and renewed the broadcasting licence for CKOD-FM for a short-term period.

Non-compliance

5. Among other things, section 3(1) of the Act declares that the broadcasting system should, through its programming, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Indigenous peoples within that society (section 3(1)(d)(iii)). It also provides that each element of the Canadian broadcasting system shall contribute to the creation and presentation of Canadian programming (sections 3(1)(e) and (s)).
6. Pursuant to the authority granted by section 9(1) of the Act and consistent with the provisions set out in section 3(1)(e), the Commission has imposed requirements on licensees relating to the broadcast of Canadian programs.
7. The Commission imposed on 9238476 Canada the following condition of licence relating to the broadcast of Canadian musical selections, set out in the appendix to Broadcasting Decision 2015-521:

2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations), in any broadcast week:

- devote, in that broadcast week, a minimum of 55% of its musical selections from content category 2 (Popular Music) to Canadian Selections broadcast in their entirety; and
- devote, between 6:00 a.m. and 6:00 p.m., in the period from Monday to Friday of the same broadcast week, 55% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

For the purposes of this condition of licence, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meanings as those set out in the Regulations.

8. Further to a performance study conducted during the week of 19 to 25 May 2019, the Commission identified apparent non-compliance with that condition of licence. Specifically, the licensee broadcast 46.9% of Canadian musical selections from content category 2 between 6:00 a.m. and 6:00 p.m., from Monday to Friday of that week, that is, from 20 to 24 May 2019.

9. In a letter to the Commission dated 5 September 2019, 9238476 Canada stated that it was unfair for a performance study to be conducted during a week that included a statutory holiday given that the Commission does not take this into account in its analysis of a licensee's compliance with its conditions of licence. It submitted that the percentages broadcast by the station during its programming hours for the week exceeded the obligations set out in its licence. Furthermore, the licensee noted that the Regulations require that 35% of musical selections broadcast be drawn from content category 2 (Popular Music), and that CKOD-FM exceeded this required minimum amount by 20%. It also indicated that it would like to be granted relief from the above-mentioned condition of licence.
10. The Commission confirms that there are no exceptions to conditions of licence during statutory holidays. It considers that the licensee should have been aware of the exception set out in the above-noted condition of licence 2 relating to the percentage of Canadian musical selections to be broadcast when it acquired the station under the same terms and conditions as those in effect under the licence in 2015. 9238476 Canada could have requested an amendment to or a reduction in its Canadian content requirements at the time of or subsequent to its acquisition of the station, which it did not do.
11. In response to a Commission staff letter dated 29 September 2020, the licensee attributed the non-compliance to an error in entering the broadcast schedule. It stated that the broadcast of 55% Canadian musical selections should have been done between 6:00 a.m. and midnight, whereas the entry shows that the measurement was taken between 6:00 a.m. and 6:00 p.m. As a result, the licensee considered that the 55% was achieved.
12. The licensee added that, since being notified of the apparent non-compliance, it has ensured that, during each broadcast week, the station has devoted not less than 55% of content category 2 musical selections to Canadian selections broadcast in their entirety. It has also removed from its music list all French-language titles from international artists.
13. The Commission notes the licensee's statements relating to the data entry error. As reflected in the licensee's responses above, the Commission considers that the licensee appears to have a limited understanding of its regulatory obligations relating to the broadcast of content category 2 musical selections.
14. In light of the above, the Commission finds 9238476 Canada in non-compliance with condition of licence 2 relating to the broadcast of Canadian musical selections, set out in the appendix to Broadcasting Decision 2015-521.

Regulatory measures

15. 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.

16. In Broadcasting Regulatory Policy 2014-554, the Commission stated that in cases of non-compliance relating to programming (including music programming), it may, in certain circumstances, require licensees of radio stations in non-compliance to make additional CCD contributions that are over and above those required by the Regulations and by existing conditions of licence.
17. The Commission may impose, as a measure to remedy the harm caused to the Canadian broadcasting system, a condition of licence requiring the licensee to make an additional CCD contribution. In regard to 9238476 Canada's non-compliance with requirements relating to music programming, the reduced broadcast of Canadian musical selections deprived certain Canadian artists of airplay that the licensee was required to provide, as well as of royalties for those artists.
18. When questioned on the possibility of additional CCD contributions and on the imposition of a condition of licence in this regard, the licensee replied that it found it unfair for the station to be subject to a condition of licence requiring that the station devote, between 6:00 a.m. and 6:00 p.m. from Monday to Friday, a minimum of 55% of content category 2 musical selections to musical selections broadcast in their entirety, whereas other radio stations in the surrounding markets are subject to a condition of licence requiring that they devote 35% of such selections to Canadian selections from 6:00 a.m. to midnight² during the broadcast week,³ the regulatory minimum. In the licensee's view, in the context of 2020 and given the competition from non-regulated media, this condition of licence is an obstacle to the viability of the station.
19. In the present case, 9238476 Canada did not seem to understand its regulatory obligations relating to the broadcast of Canadian content category 2 musical selections at the time of the Commission's performance study. However, the Commission notes that the licensee has put in place measures to remedy the non-compliance. The Commission notes the licensee's willingness to comply with its regulatory requirements. Nevertheless, given the seriousness of the licensee's non-compliance in regard to its obligation relating to the broadcast of Canadian musical selections, the Commission finds that it would be appropriate to impose a condition of licence requiring the licensee to make an additional CCD contribution to remedy the harm caused to the broadcasting system. A **condition of licence** to that effect is set out in the appendix to this decision.

² Commercial radio stations are also subject to the regulatory obligation requiring that from Monday to Friday, between 6:00 a.m. and 6:00 p.m., at least 35% of musical selections from content category 2 be devoted to Canadian musical selections broadcast in their entirety.

³A broadcast week refers to the total number of hours devoted to broadcasting during the 126-hour period extending from 6:00 a.m. to midnight for seven consecutive days beginning on Sunday.

Conclusion

20. In light of all of the above, the Commission **renews** the broadcasting licence for the French-language commercial radio programming undertaking CKOD-FM Salaberry-de-Valleyfield, Quebec, from 1 March 2021 to 31 August 2027. The **conditions of licence** are set out in the appendix to this decision.

Reminders

Tangible benefits

21. 9238476 Canada must pay any remaining tangible benefits stemming from the ownership transaction approved in Broadcasting Decision 2015-521.

Local news and information

22. Local radio stations are an important daily source of local news and information for communities. Holding a broadcasting licence comes with conditions, regulatory obligations and responsibilities, which include contributing to the Canadian broadcasting system by ensuring that Canadians have access to local programming that reflects their needs and interests and informs them of important current issues.

23. For CKOD-FM, the licensee proposed to broadcast one hour and 20 minutes of news each week.

24. Although Broadcasting Public Notice 2006-158 does not specify a minimum level of weekly news to be broadcast, it does specify the type of spoken word material that must be included as part of a station's local programming. In accordance with that public notice, the Commission reminds the licensee that CKOD-FM, in its local programming, must incorporate spoken word material of direct and particular relevance to the communities served, and that this programming must include local news, weather, sports coverage, and the promotion of local events and activities. In addition, the Commission encourages the licensee to ensure that a reasonable amount of daily local news and information is made available to those communities

Operation of the station in compliance

25. The Commission reminds the licensee that holding a broadcasting licence is a privilege and that the licensee must comply with its conditions of licence and regulatory obligations in order to be able to operate its station in compliance.

Force and effect of broadcasting licences

26. 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
- *CKOD-FM Salaberry-de-Valleyfield – Acquisition of assets*, Broadcasting Decision CRTC 2015-521, 24 November 2015
- *Update on the Commission’s approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2021-87

Terms, conditions of licence, expectation and encouragement for the French-language commercial radio programming undertaking CKOD-FM Salaberry-de-Valleyfield, Quebec

Terms

The licence will expire 31 August 2027.

Conditions of licence

1. The licensee shall adhere to the conditions set out in *Conditions of licence for AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations), in any broadcast week:
 - devote, in that broadcast week, a minimum of 55% of its musical selections from content category 2 (Popular Music) to Canadian Selections broadcast in their entirety; and
 - devote, between 6:00 a.m. and 6:00 p.m., in the period from Monday to Friday of the same broadcast week, 55% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

For the purposes of this condition of licence, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meanings as those set out in the Regulations.

3. In addition to the required basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time, the licensee shall make a CCD contribution of \$1,549 to Musicaction during the 2020-2021 broadcast year (by no later than **31 August 2021**), to remedy the harm caused to the Canadian broadcasting system resulting from the licensee’s non-compliance with its regulatory obligations relating to the broadcast of Canadian musical selections during the previous licence term, as identified in *CKOD-FM Salaberry-de-Valleyfield – Licence renewal*, Broadcasting Decision CRTC 2021-87, 23 February 2021. Further, the licensee must file, by no later than **30 November 2021**, in a form deemed acceptable by the Commission, proof of payment regarding the additional contribution, as well as supporting documents confirming the eligibility of the contribution.

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.