



## Broadcasting Decision CRTC 2021-96

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

Ottawa, 26 February 2021

### **Cobequid Radio Society**

Lower Sackville, Nova Scotia

*Public record for this application: 2019-0900-6*

### **CIOE-FM Lower Sackville – Licence renewal**

*The Commission **renews** the broadcasting licence for the English-language community radio station CIOE-FM Lower Sackville, Nova Scotia, from 1 March 2021 to 31 August 2025. 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 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, Cobequid Radio Society (Cobequid Radio) filed an application to renew the broadcasting licence for the English-language community radio station CIOE-FM Lower Sackville, Nova Scotia, which expires 28 February 2021.<sup>1</sup> The Commission did not receive any interventions in regard to this application.

#### **Non-compliance**

##### **Annual returns**

4. Section 10(1)(i) of the Act authorizes the Commission, in furtherance of its objects, to make regulations requiring licensees to submit to the Commission such information

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<sup>1</sup> 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.

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 made section 9(2) of the *Radio Regulations, 1986* (the Regulations), which requires licensees to file an annual return, 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, including the requirement to file financial statements, are set out in Broadcasting Information Bulletin 2011-795.
6. According to Commission records:
  - the annual return for CIOE-FM for the 2014-2015 broadcast year was not filed;
  - the station's annual returns for the 2015-2016 through and 2017-2018 broadcast years were filed late, specifically on 30 November 2019, and were incomplete;
  - the station's financial statements for the 2014-2015 through 2018-2019 broadcast years were not filed;
  - the station's annual return for the 2018-2019 broadcast year was filed late, specifically, on 15 January 2020, and covered for the wrong reporting period; and
  - Form 1411 (survey regarding the implementation of the National Public Alerting System (NPAS)) was not filed for the 2014-2015 and 2015-2016 broadcast years.
7. Cobequid Radio submitted that it had undergone a restructuring of its board of directors and operations at the time CIOE-FM commenced operations, and that during that transformation, information regarding regulatory requirements was not shared with the new working team, whereas it had assumed that these requirements were being met. The licensee indicated that it was made aware of the reports not being filed only after being informed by Commission staff in the fall of 2019.
8. The licensee added that, at that time, the Vice-Chairman and Technical Director began the process of gathering the necessary documents to ensure the station was in compliance with its regulatory requirements, but that the process took longer than expected given that some of the individuals previously involved with record-keeping were no longer with the organization.
9. The licensee indicated that, in the absence of proper financial statements and reports on hand, all required reports that indicated revenues and expenditures for the years noted were filed with the Commission incorrectly, as they should have stated that the

information was not available at the time and would be updated when the internal reports and financial statements were completed.

10. Cobequid Radio stated that it takes the issues of non-compliance very seriously and that it has taken extensive measures to ensure that the station completes the necessary steps to file the delinquent reports. The licensee added that it has also put in place a process to ensure that upcoming reports are filed on time, and that it does not foresee any further issues with ensuring that reports and statements are completed in a timely fashion.
11. Finally, the licensee indicated that there was a slight delay in completing the delinquent reports due to the COVID-19 pandemic, but that the missing annual returns and financial statements would be filed with the Commission by 13 November 2020.
12. In light of the above, the Commission finds the licensee in non-compliance with section 9(2) of the Regulations for the 2014-2015 through 2018-2019 broadcast years.

#### **Implementation of the National Public Alerting System**

13. Section 10(1) of the Act authorizes the Commission to make regulations furthering its objects regarding the broadcasting of programs. 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.
14. The provision of emergency alert messages is achieved through Canada's NPAS. In Broadcasting Regulatory Policy 2014-444, the Commission announced that it was requiring broadcasters to fully participate in the NPAS. In this regard, it set out that most broadcasters in Canada would be required to alert Canadians to imminent threats to life by 31 March 2015. For campus, community and Indigenous radio stations and television broadcasters, as well as radiocommunication distribution undertakings, participation in the NPAS would be required by 31 March 2016.
15. In regard to campus, community and Indigenous radio stations and television broadcasters, as well as radiocommunication distribution undertakings, pursuant to the authority granted by section 10(1) of the Act, the Commission made section 16(3) 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 2016, 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.

16. As part of its annual return for the 2018-2019 broadcast year, the licensee indicated in Form 1411 that the alerting system had not yet been implemented for CIOE-FM.
17. Cobequid Radio stated that, during the station's early years, it struggled to generate revenues to invest in equipment and upgrades to implement the NPAS. The licensee indicated that it held a series of community fundraisers to generate capital to implement the NPAS, and that while it had reached its financial goals and was planning to complete the installation by May 2020, this became impossible given that it had to reduce non-essential work at the station due to the COVID-19 pandemic. It further noted that it also had a major revenue reduction during that time. Cobequid Radio added, however, that the NPAS would be installed for CIOE-FM before 31 December 2020. The Commission notes that at the time of this decision, the licensee has still not implemented the NPAS.
18. In light of the above, the Commission finds the licensee in non-compliance with section 16(3) of the Regulations.

### **Regulatory measures**

19. 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.
20. As set out in Broadcasting Regulatory Policy 2014-554, for stations 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 to respond to and discuss apparent non-compliance; issuing a mandatory order requiring the licensee to comply with regulatory requirements; or suspending, not renewing, or revoking the licence.
21. Although the licensee filed some of the missing annual returns and some of the missing financial statements as it had indicated that it would in reply to a request by Commission staff, some of the documentation has yet to be filed:
  - the annual return and financial statements for the 2014-2015 broadcast year were filed almost five years late (on 14 November 2020);
  - the financial statements for the 2015-2016, 2016-2017 and 2018-2019 broadcast years were filed late (on 12 November 2020);
  - the financial statements for the 2017-2018 broadcast year have yet to be filed;

- the annual returns for the 2015-2016, 2016-2017 and 2017-2018 broadcast years were filed late (on 30 November 2019) and were incomplete, missing information on revenues and expenses. These returns were returned to the licensee, and have been refiled with the Commission and they are now complete;
  - the annual return for the 2018-2019 broadcast year was filed late (on 15 January 2020) and the financial summary Form 1110 was filed for the wrong reporting period (ending 30 November 2019, rather than 31 August 2019, i.e., the end of the broadcast year);
  - Form 1411 (the survey regarding the implementation of the NPAS) has yet to be filed for the 2014-2015 and 2015-2016 broadcast years.
22. The Commission recognizes that the instances of non-compliance with section 9(2) of the Regulations may have occurred because the licensee did not receive system-generated notices from the Commission indicating that it had to file any types of reports or documentation with the Commission.
23. The Commission is of the view that although community stations are generally run by volunteers and have a higher turnover, it is still the licensee's responsibility to ensure that its regulatory requirements are being met. In this case, due to some confusion, the licensee was not registered in the Commission's system and did not receive notifications of the need to file the various reports and information with the Commission. The Commission considers this situation to be unique, and notes that once the licensee was advised of this situation, it immediately provided the information necessary to begin receiving notifications.
24. The Commission notes that the licensee, after being made aware of its apparent non-compliance in September 2019, immediately assigned a person to fill out the forms and reports. The Commission acknowledges that the licensee has begun to submit annual returns; however, it continues to struggle with the requirements relating to the submission of these documents. The filing of complete and timely annual returns, including financial statements, is a basic and fundamental regulatory obligation. Compliance with this requirement not only allows the Commission to effectively monitor licensees' performance and compliance with various regulations and obligations, but also enables it to effectively assess, supervise, and regulate the radio broadcasting industry as a whole. Accordingly, the late or incomplete filing of annual returns and financial statements is considered to be a serious matter. Consequently, the Commission has concerns over the licensee's ability to remain in compliance with these requirements over the next licence term.
25. In light of the above, the Commission finds it appropriate to set out a requirement for Cobequid Radio to file the missing documentation for CIOE-FM for the 2014-2015, 2015-2016 and 2017-2018 broadcast years by **27 May 2021**. A **condition of licence** to that effect is set out in the appendix to this decision.

26. In regard to the licensee's non-compliance relating to the implementation of the NPAS, the Commission considers this non-compliance to be very severe in nature given that more than four years have passed since the 31 March 2016 deadline for community radio stations to install the system. Although community radio stations have limited financial means, the Commission finds that the licensee's failure to implement the alerting system represents a gap in critical infrastructure to warn Canadians of situations where imminent threat to life exists.
27. The Commission considers that the licensee has taken steps to ensure its compliance toward the installation of the NPAS in the near future and that the measures the licensee has put in place should allow it to operate the station in compliance with its regulatory obligations going forward. Nevertheless, the Commission finds that it would be appropriate to require the licensee to implement the NPAS on CIOE-FM by no later than **27 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.
28. The Commission has examined the public record for this application and notes that this is the station's first licence term and these are its first instances of non-compliance. However, given the seriousness of the licensee's non-compliance with requirements relating to the filing of annual returns and to the implementation of the NPAS, the Commission finds that it would be appropriate to renew the broadcasting licence for CIOE-FM for a short-term period, which will allow for an earlier review of the licensee's compliance with its regulatory requirements.

## **Conclusion**

29. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language community radio programming undertaking CIOE-FM Lower Sackville, Nova Scotia, from 1 March 2021 to 31 August 2025. The **conditions of licence** are set out in the appendix to this decision.

## **Reminders**

### **Annual returns**

30. Licensees are responsible for filing complete annual returns on time, representing a broadcast year and not a calendar year. A broadcast year is from 1 September of a given year to 31 August of the next year, whereas the calendar year is from 1 January to 31 December of each year. In addition, as set out in Broadcasting Information Bulletin 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**

31. 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 relating to the NPAS not be fulfilled.

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

32. 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
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 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
- *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 2021-96

### Terms, conditions of licence, expectations and encouragement for the English-language community radio programming undertaking CIOE-FM Lower Sackville, Nova Scotia

#### Terms

The licence will expire 31 August 2025.

#### Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in *Standard conditions of licence for campus and community stations*, Broadcasting Regulatory Policy CRTC 2012-304, 22 May 2012, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. As an exception to section 2.2(8) of the *Radio Regulations, 1986*, the licensee shall devote at least 40% of its musical selections from content category 2 (Popular Music) in any broadcast week to Canadian selections broadcast in their entirety.
3. As an exception to section 2.2(3)(a) of the *Radio Regulations, 1986*, the licensee shall devote at least 15% of its musical selections from content category 3 (Special Interest Music) in any broadcast week to Canadian selections broadcast in their entirety.
4. The licensee shall submit complete annual returns for the station, including financial statements and the National Public Alerting System forms, for the 2014-2015, 2015-2016 and 2017-2018 broadcast years as soon as possible and, in any event, no later than **27 May 2021**.
5. In order to comply with the requirements set out in section 16(3) of the *Radio Regulations, 1986* and in *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 **27 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.

### **Expectations**

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

The Commission expects all community and campus licensees to file yearly updates on the composition of their boards of directors. These annual updates can be submitted at the time of submission of annual returns, following annual board of directors' elections or at any other time. Such information may be submitted through the Commission's website.

### **Encouragement**

The Commission considers that community radio stations should be particularly sensitive to employment equity issues in order to reflect fully the communities they serve. It encourages the licensee to consider these issues in its hiring practices and in all other aspects of its management of human resources.