



Broadcasting Decision CRTC 2023-259

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Reference: Part 1 licence renewal application posted on 22 November 2022

Ottawa, 18 August 2023

LE5 Communications Inc.
Sudbury, Ontario

Public record: 2022-0823-0

CHYC-FM Sudbury – Licence renewal

Summary

The Commission **renews** the broadcasting licence for the French-language commercial radio station CHYC-FM Sudbury, Ontario, from 1 September 2023 to 31 August 2026. 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 subsections 9(1) and 9.1(1) of the *Broadcasting Act*, to issue and renew licences and to make orders imposing conditions on the carrying on of a broadcasting undertaking that it considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*.
2. On 10 June 2022, the Commission issued Broadcasting Notice of Consultation 2022-152,¹ which listed radio stations for which the broadcasting licences would expire 31 August 2023 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, LE5 Communications Inc. filed an application to renew the broadcasting licence for the French-language commercial radio station CHYC-FM Sudbury, Ontario, which expires 31 August 2023. The Commission did not receive any interventions in regard to this application.

¹ As corrected in Broadcasting Notice of Consultation 2022-152-1.

Background

4. In Broadcasting Decision 2013-463, the Commission renewed the broadcasting licence for CHYC-FM for a short-term period due to the licensee's non-compliance with subsection 9(2) of the *Radio Regulations, 1986* (the Regulations) relating to the filing of annual returns and section 15 relating to basic annual Canadian content development (CCD) contributions.
5. In Broadcasting Decision 2019-246, the Commission renewed the broadcasting licence for CHYC-FM for a short-term period due to the licensee's non-compliance with subsection 8(5) of the Regulations relating to the requirement for licensees to retain a clear and intelligible audio recording, and paragraphs 9(3)(a) and 9(3)(b) relating to the obligation to provide a complete and accurate self-assessment report and a complete and accurate music list.

Non-compliance

Music list

6. Paragraph 10(1)(i) of the old *Broadcasting Act*, which was in effect while the licensee's application was being considered, granted the Commission the authority, in furtherance of its objects, to make regulations 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.
7. Pursuant to this authority, the Commission made paragraph 9(3)(b) of the Regulations, which sets out the requirements regarding the information on musical selections that licensees must include in their lists of musical selections for any period specified by the Commission.
8. Subsection 49(2) of the *Online Streaming Act*, which made a certain number of amendments to the *Broadcasting Act* when it came into force on 27 April 2023, stipulates that any regulation made pursuant to paragraph 10(1)(i) of the old *Broadcasting Act* is deemed to be an order made under section 9.1 of the new *Broadcasting Act*. Accordingly, paragraph 9(3)(b) of the Regulations is considered to be a condition of service pursuant to paragraph 9.1(1)(o) of the new *Broadcasting Act*, and licensees continue to be subject to this requirement.
9. As part of CHYC-FM's licence renewal process, the Commission evaluated the station's programming for the 3-9 October 2022 broadcast week and found that several musical selections identified as Canadian in the music list required more information or did not qualify as such. In addition, some musical selections were aired more than once during that same broadcast week and were identified in some places in the music list as Canadian, and in other places as non-Canadian.
10. The licensee stated that errors were introduced in the music list due to the use of the DMDS broadcasting system, which contained coding errors. It added that it had to

code the musical selections manually. For this reason, the licensee does not believe it is in non-compliance.

11. The licensee noted that it is difficult to find the human and financial resources needed to operate the station in an official language minority community. The licensee considers that any regulatory action that might be taken against it would not be in the public interest.
12. In light of the above, the Commission finds the licensee in non-compliance with paragraph 9(3)(b) of the Regulations.

Regulatory measures

13. 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.
14. In regard to CHYC-FM and the licensee's non-compliance with paragraph 9(3)(b) of the Regulations, the Commission notes that this is the second consecutive licence period in which CHYC-FM has been in non-compliance with the obligation to provide a complete and accurate music list. Furthermore, the licensee did not acknowledge that the station is in non-compliance.
15. The Commission has reviewed the public record of this application and is not convinced that the measures put in place by the licensee will enable it to operate the station in compliance with its regulatory requirements in the future. In light of the seriousness and recurrence of the non-compliance with the obligation to file a complete and accurate music list, the Commission finds that it is appropriate to renew CHYC FM's broadcasting licence for a short period, which will allow for an earlier review of the licensee's compliance with its regulatory requirements.

Conclusion

16. In light of all of the above, the Commission **renews** the broadcasting licence for the French-language commercial radio station CHYC-FM Sudbury, Ontario, from 1 September 2023 to 31 August 2026.
17. Pursuant to subsections 49(1) and 50(2) of the *Online Streaming Act*, the conditions of licence that existed prior to the date of royal assent of that Act are deemed to be conditions imposed under an order made pursuant to section 9.1 of the new *Broadcasting Act*, or subsection 11.1(2) in the case of expenditure requirements. As such, the conditions of licence for this licensee became conditions of service and continue to apply to the licensee. For ease of reference, the **conditions of service** for this licensee are set out in the appendix to this decision. Further, the formal broadcasting licence document issued to a licensee may set out additional

requirements for the undertaking, relating to, for example, technical parameters or prohibitions on transfer. The licensee shall also adhere to any such requirements set out in the broadcasting licence for the undertaking.

Reminders

18. The Commission reminds the licensee that it must comply at all times with the requirements set out in the *Broadcasting Act*, the Regulations, its licence and its conditions of service.
19. Should the licensee continue to be in non-compliance with regulatory requirements, the Commission may consider recourse to additional measures, including the issuance of a mandatory order, or the revocation, non-renewal or suspension of the licence pursuant to sections 9 and 24 of the *Broadcasting Act*.

Radio monitoring materials

20. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. The submission of complete and accurate radio monitoring materials enables the Commission to conduct an analysis of a station's programming to verify compliance with the Regulations and conditions of licence. The retention of these radio monitoring materials makes it possible for the Commission to investigate a station's programming in the case of complaints. As such, any licensee that does not file the requested material in a timely manner, files material that is incomplete or does not file the material at all, affects the ability of the Commission to adequately perform its duty to independently confirm the licensee's adherence to its regulatory obligations. These filings also become important indicators of whether the licensee has the willingness, ability and knowledge necessary to bring itself into compliance and maintain such compliance.

Local news

21. Radio stations are an important daily source of local news and information for communities. Carrying on a broadcasting undertaking 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.
22. Although Broadcasting Regulatory Policy 2022-332 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 regulatory policy, the Commission reminds the licensee that its station, 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.

Force and effect of broadcasting licences

23. Pursuant to section 22 of the *Broadcasting Act*, the broadcasting licence renewed in this decision will cease to have any force or effect should the broadcasting certificates issued by the Department of Industry (also known as Innovation, Science and Economic Development Canada) lapse.

Practical guide for radio licence renewals

24. To learn more about the Commission's review of compliance with requirements relating to radio licences, and about the radio renewal process, please consult the Commission's [Practical guide to radio licence renewals](#).

Secretary General

Related documents

- *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022
- *Call for licence renewal applications – Submission of renewal applications for broadcasting licences of radio stations expiring on 31 August 2023 – Regular renewal process*, Broadcasting Notice of Consultation CRTC 2022-152, 10 June 2022, as corrected by Broadcasting Notice of Consultation CRTC 2022-152-1, 18 August 2022
- *CHYC-FM Sudbury – Licence renewal*, Broadcasting Decision CRTC 2019-246, 9 July 2019
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *CHYC-FM Sudbury, and CHYK-FM Timmins and its transmitters – Licence renewals*, Broadcasting Decision CRTC 2013-463, 30 August 2013

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2023-259

Terms, conditions of service, expectations and encouragement for the French-language commercial radio programming undertaking CHYC-FM Sudbury, Ontario

Terms

The licence will expire 31 August 2026.

Conditions of service

1. The licensee shall adhere to the conditions of service set out in *Revised conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2022-334, 7 December 2022. Further, the licensee shall adhere to the requirements set out in the broadcasting licence for the undertaking.
2. The licensee shall adhere to all applicable requirements set out in the *Radio Regulations, 1986*, that were made under paragraph 10(1)(a) or under paragraph 10(1)(i) of the old *Broadcasting Act*.²

Expectations

Cultural diversity

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

Canadian emerging artists

Consistent with the Commission's determination set out in *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022 (Broadcasting Regulatory Policy 2022-332), the Commission expects the licensee to devote, in each broadcast week, at least 5% of the station's musical selections to selections from Canadian emerging artists broadcast in their entirety. The licensee should report annually on how it has met this expectation, including the percentage of selections from Canadian emerging artists out of the total number of musical selections that were aired, and the number of distinct artists whose music has been aired. The licensee should also be able to provide, upon request, information such as a list of all titles, artists, and International Standard Recording Code (ISRC) numbers.

For the purposes of the above paragraph, the definition of "Canadian emerging artist" is the same as that set out in paragraph 346 of Broadcasting Regulatory Policy 2022-332.

² Pursuant to subsection 49(2) of the *Online Streaming Act*, which made a certain number of amendments to the *Broadcasting Act* when it came into force on 27 April 2023, any regulation made under paragraphs 10(1)(a) or 10(1)(i) of the old *Broadcasting Act* is deemed to be an order made under section 9.1 of the new *Broadcasting Act*.

Indigenous musical selections

Consistent with the Commission's determination set out in *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022 (Broadcasting Regulatory Policy 2022-332), the Commission expects the licensee to include Indigenous musical selections on the station's playlist. The licensee should report annually on the amount of Indigenous content aired on the station throughout the broadcast year (i.e., from 1 September to 31 August), including the percentage of Indigenous musical selections out of the total number of musical selections that were aired, and the number of distinct artists whose music has been aired. The licensee should also be able to provide, upon request, information such as a list of all titles, artists, and International Standard Recording Code (ISRC) numbers.

For the purposes of the above paragraph, the licensee may use the provisional definition of "Indigenous-Canadian musical selection" set out in paragraph 441 of Broadcasting Regulatory Policy 2022-332 to determine whether a musical selection can be considered an Indigenous musical selection.

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.