



Broadcasting Decision CRTC 2012-587

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Ottawa, 22 October 2012

CJEC inc.
Québec, Quebec

*Application 2012-0018-8, received 5 January 2012
Public hearing in the National Capital Region
19 June 2012*

CJEC-FM Québec – Licence renewal

*The Commission **renews** the broadcasting licence for the French-language commercial radio station CJEC-FM Québec from 1 December 2012 to 31 August 2015. This short-term licence renewal will allow for an earlier review of the licensee's compliance with the Radio Regulations, 1986 and its conditions of licence.*

Introduction

1. The Commission received an application from CJEC inc. (CJEC) to renew the broadcasting licence for the French-language commercial radio programming undertaking CJEC-FM Québec. The licence expires on 30 November 2012.¹
2. The Commission notes that in a letter dated 19 January 2012, it approved a change to the effective control of CJEC, from trustee Fernand Bélisle to Leclerc Communications inc.²
3. In Broadcasting Notice of Consultation 2012-224, the Commission noted that the licensee appeared to be in non-compliance with section 2.2(5) of the *Radio Regulations, 1986* (the Regulations) concerning the broadcast of French-language vocal music during the broadcast week of 30 May to 5 June 2010, as well as with section 15 of the Regulations as it relates to its contributions to Canadian content development (CCD) for the 2009-2010 and 2010-2011 broadcast years.
4. As regards CCD contributions for the 2009-2010 broadcast year, the Commission notes, upon further review, that the licensee appears to be in non-compliance with its

¹ The Commission administratively renewed the licence for CJEC-FM from 1 September 2012 to 30 November 2012 in Broadcasting Decision 2012-341.

² See Appendix 1 to Broadcasting Information Bulletin 2012-353.

condition of licence regarding Canadian talent development (CTD) contributions rather than section 15 of the Regulations. Further, having examined the record, the Commission notes that the licensee also appears to be in non-compliance with section 9(2) of the Regulations as it relates to the filing of annual returns for the 2009-2010 broadcast year.

5. The Commission further notes that the station was granted a short-term licence renewal of four years in Broadcasting Decision 2008-345 due to the licensee's non-compliance as regards its CTD contributions.
6. The Commission received an intervention concerning this application from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ). The public record for this application is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Issues

7. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
 - non-compliance with section 2.2(5) of the Regulations concerning the broadcast of French-language vocal music during the broadcasting week;
 - non-compliance with the condition of licence regarding CTD contributions and with section 15 of the Regulations concerning contributions to CCD for the 2010-2011 broadcast year;
 - non-compliance with section 9(2) of the Regulations with regard to the filing of annual returns.

Non-compliance with section 2.2(5) of the Regulations

8. Section 2.2(5) of the Regulations states that a licensee that is licensed to operate a French-language commercial station shall devote at least 65% of its vocal musical selections from content category 2 (Popular Music) in each broadcast week to musical selections in the French language broadcast in their entirety during that broadcast week.
9. The Commission monitored the programming of CJEC-FM for the week of 30 May to 5 June 2012. Based on a review of the logger tape of 2 June 2010 and the music lists for that week, the Commission found that the licensee devoted 63.7% of its musical selections from content category 2 to French-language selections broadcast in their entirety.
10. In its intervention, ADISQ submitted that CJEC-FM's non-compliance was due to the inappropriate use of montages and asked that the Commission impose a condition of

licence limiting the station's use of montages to 10% of its overall programming, as set out in Broadcasting Information Bulletin 2011-728.

11. In its reply, the licensee rejected ADISQ's claim regarding montages on the basis that, when the Commission evaluated the station, it was being operated in an Adult Contemporary music format that rarely included montages. The licensee submitted that the non-compliance was a result of the Commission's analysis, which, according to the licensee, covered only one broadcast day rather than a week. The licensee also noted that the non-compliance occurred when the station was owned by Cogeco Diffusion inc. (Cogeco), which had assured the licensee of the station's compliance with all regulatory obligations. The licensee added that the Commission should give it the benefit of the doubt, given that the station did comply with section 2.2(10) of the Regulations concerning the broadcast of French-language vocal music from 6 a.m. to 6 p.m., Monday to Friday, and exceeded Canadian content requirements. The licensee nonetheless stated that it would ensure going forward that the station's regulatory obligations regarding the broadcast of French-language vocal music are met.

Commission's analysis and decisions

12. The Commission reminds the licensee that the results of its analysis are based on an evaluation of the logger tape of 2 June 2010 and the music lists for the week of 30 May to 5 June 2010 and that they remain valid. With respect to the issue of montages raised by ADISQ, the Commission considers that, based on its analysis of the logger tape, the licensee did not make inappropriate use of montages. Accordingly, the Commission considers that it is not necessary to impose a condition of licence limiting the broadcast of montages to 10% of all programming in a broadcast week. However, given that the analysis revealed that the licensee devoted 63.7% of its musical selections from content category 2 to French-language selections, the Commission concludes that the licensee is in non-compliance with section 2.2(5) of the Regulations. The Commission expects the licensee to take measures to rectify the situation and ensure future compliance.

Non-compliance with the condition of licence regarding CTD and with section 15 of the Regulations

13. The licensee is currently subject to the following condition of licence:

The licensee is required to fulfill all its commitments in regard to Canadian talent development (CTD) set out in *New FM radio station in Québec*, Broadcasting Decision CRTC 2002-191, 16 July 2002 (Broadcasting Decision 2002-191). Consequently, in the broadcast year ending 31 August 2010, the licensee shall expend \$300,000 to support the development of Canadian talent. In accordance with Broadcasting Decision 2002-191, the funds shall be allocated as follows:

- \$100,000 (\$50,000 in each of 2008-2009 and 2009-2010) to MUSICACTION;

- \$100,000 (\$50,000 in each of 2008-2009 and 2009-2010) to Fonds RadioStar;
- \$90,000 (\$45,000 in each of 2008-2009 and 2009-2010) to the La relève d'artistes en chanson project, as part of the Québec summer festival; and
- \$10,000 (\$5,000 in each of 2008-2009 and 2009-2010) to grants to students from two radio educational institutions. Cogeco Diffusion inc. is also committed to offer annual internships to students from the same two institutions in order to allow them to gain experience in Quebec radio.

14. The Commission notes that according to its records the licensee made the following contributions in the 2009-2010 broadcast year:

- \$1,000 of the \$50,000 required to MUSICACTION, representing a shortfall of \$49,000; and
- \$0 to Fonds Radiostar, representing a shortfall of \$50,000.
- \$50,000 to performing arts projects, i.e. \$5,000 more than required by the condition of licence;
- \$5,000 to a scholarship program, as set out in the condition of licence;

15. The licensee therefore accumulated a shortfall of \$99,000 over the course of the 2009-2010 broadcast year.

16. Regarding the 2010-2011 broadcast year, pursuant to section 15 of the Regulations, a licensee must make a basic annual contribution to eligible CCD initiatives. The Commission notes that the licensee made an incomplete contribution in this regard for that broadcast year.

17. The licensee stated that these instances of non-compliance occurred when the station was owned by Cogeco, which had assured the licensee of the station's compliance with all its regulatory obligations. The licensee submitted that the trustee's answers to the Commission's questions in the proceeding to change the effective control of CJEC demonstrated that all required CCD contributions had been made. However, the licensee confirmed that it would ensure going forward that the station's regulatory obligations are met.

18. ADISQ asked that the Commission clarify the situation and that, in the event of a violation, it require that the shortfalls be rectified as soon as possible and that a fair share be allocated to MUSICACTION.

Commission's analysis and decisions

19. With regard to the CTD contributions required by condition of licence for the 2009-2010 broadcast year, the Commission's analysis of the evidence provided shows the following:
- The licensee stated that it made an additional payment of \$50,000 to MUSICACTION during the 2008-2009 broadcast year, but this payment was dated 8 November 2007, meaning that it was made in the 2007-2008 broadcast year, i.e. the previous licence term. As such, the payment cannot be claimed for the new licence term, which began in 2008-2009.
 - The licensee made an additional contribution of \$41,667 to Fonds Radiostar and of \$5,000 to La relève d'artistes en chanson during the 2008-2009 broadcast year.
 - The abovementioned shortfall for the 2009-2010 broadcast year remains.
20. Contributions to CTD and CCD are to be allocated to initiatives as set out in a licensee's conditions of licence and the Regulations, as the case may be. They are also to be paid by 31 August of the broadcast year for which they are claimed and cannot be transferred from one year to another without the Commission's approval.
21. The Commission notes that the licensee has a CTD shortfall of \$99,000 for the 2009-2010 broadcast year, representing \$49,000 to MUSICACTION and \$50,000 to Fonds Radiostar. Accordingly, the Commission finds CJEC in non-compliance with its condition of licence relating to CTD contributions.
22. While the Commission usually requires that shortfalls for each broadcast year be paid in their entirety, in light of the circumstances, in the present case the Commission considers it appropriate to permit the licensee to deduct the overpayment to Fonds Radiostar from the 2008-2009 broadcast year from the Fonds Radiostar shortfall for the 2009-2010 broadcast year. Accordingly, when the overpayment of \$41,667 to Fonds Radiostar is applied, the remaining shortfall for Fonds Radiostar is \$8,333.
23. In light of the above, the Commission will require, by **condition of licence**, that the licensee contribute \$8,333 to Fonds Radiostar and \$49,000 to MUSICACTION by **31 December 2012** and provide acceptable proof of payment in the annual return for the 2012-2013 broadcast year.
24. With regard to section 15 of the Regulations, the Commission notes that the basic CCD contribution is calculated based on broadcasting revenues from the previous broadcast year. In the present case, the Commission notes that the licensee made a payment that was less than the amount required based on the revenues declared in the annual return for the 2009-2010 broadcast year. Accordingly, the Commission concludes that the licensee is in non-compliance with section 15 of the Regulations for the 2010-2011 broadcast year. The licensee shall fulfill its outstanding CCD

contribution for 2010-2011 by **31 December 2012** and shall provide evidence of payment to the Commission in the annual return for the 2012-2013 broadcast year. The Commission informed the licensee of this amount in a confidential letter dated 22 March 2012, given that station revenues are confidential.

Non-compliance with section 9(2) of the Regulations

25. Section 9(2) of the Regulations states that on or before 30 November 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 the previous 31 August. The Commission notes that the annual return for the 2009-2010 broadcast year was filed on 14 January 2011, after the 30 November deadline.
26. The licensee stated that the non-compliance occurred when the station was owned by Cogeco, which had assured the licensee that the return had been submitted on 30 November 2010. However, the licensee confirmed that it would ensure going forward that the station's regulatory obligations regarding the filing of annual returns are met.

Commission's analysis and decisions

27. The Commission notes that the Regulations clearly set out the information required and the deadline for the filing of annual returns. Accordingly, in light of the late filing of the 2009-2010 return, the Commission finds CJEC in non-compliance with section 9(2) of the Regulations for that broadcast year.

Regulatory measures

28. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach for dealing with non-compliance by radio stations. In particular, the Commission indicated that each instance of non-compliance would be evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The Commission also indicated that it would consider the circumstances relating to the non-compliance, the arguments provided by the licensee and the measures taken to rectify the situation.
29. The Commission notes that the licensee considers that it should not receive any sanctions given that it acquired the station recently and that the instances of non-compliance occurred under its previous owner. The Commission reminds CJEC that when it acquired the station, it became accountable for all of the station's instances of non-compliance in the current licence term. However, the Commission also notes CJEC's commitments to ensure compliance going forward.
30. In accordance with its revised approach for dealing with non-compliance by radio stations set out in Broadcasting Information Bulletin 2011-347, the Commission considers that a short-term licence renewal for CJEC-FM is appropriate. Accordingly, the Commission **renews** the broadcasting licence for the French-language commercial radio station CJEC-FM Québec from 1 December 2012 to 31 August 2015, i.e. for a

period of three years from the original expiry date of 31 August 2012. This short-term licence renewal will allow for an earlier review of the licensee's compliance with the Regulations and its conditions of licence.

31. The Commission also requires, by **condition of licence**, that CJEC contribute \$8,333 to Fonds Radiostar and \$49,000 to MUSICACTION by **31 December 2012** and submit proof of payment to the Commission with its annual return for the 2012-2013 broadcast year. The licensee shall also fulfill its basic CCD contribution for the 2010-2011 broadcast year by **31 December 2012** and submit proof of payment to the Commission with its annual return for the 2012-2013 broadcast year.
32. The terms and **conditions of licence** are set out in the appendix to this decision. With regard to CCD contributions, the licensee has confirmed that it will henceforth comply with the requirements set out in section 15 of the Regulations. In this regard, the Commission notes that condition of licence 3 set out in Broadcasting Decision 2008-345 has expired and no longer applies.

Secretary General

Related documents

- *Applications processed pursuant to streamlined procedures*, Broadcasting Information Bulletin CRTC 2012-353, 28 June 2012
- *Administrative renewals*, Broadcasting Decision CRTC 2012-341, 22 June 2011
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2012-224, 18 April 2012, as amended by Broadcasting Notice of Consultation CRTC 2012-224-1, 11 May 2012
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *Requirements for the broadcast of radio montages*, Broadcasting Information Bulletin CRTC 2011-728, 24 November 2011
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Clarifications regarding Canadian Content Development contributions made by commercial radio stations*, Broadcasting Information Bulletin CRTC 2009-251, 5 May 2009
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009
- *CJEC-FM Québec – Licence renewal*, Broadcasting Decision CRTC 2008-345, 5 December 2008

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

Appendix to Broadcasting Decision CRTC 2012-587

Term and conditions of Licence

Term

The licence will expire 31 August 2015.

Conditions of licence

1. The licensee shall adhere to the standard conditions set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.
2. The licensee shall contribute \$8,333 to Fonds Radiostar and \$49,000 to MUSICACTION by 31 December 2012 and submit proof of payment to the Commission with its annual return for the 2012-2013 broadcast year.