



## Broadcasting Decision CRTC 2014-381

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Route reference: 2014-143

Ottawa, 22 July 2014

**Fabmar Communications Ltd.**  
Chilliwack, British Columbia

*Application 2013-1441-8, received 1 November 2013*

### **CHWK-FM Chilliwack – Licence renewal and amendment**

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CHWK-FM Chilliwack from 1 September 2014 to 31 August 2021.*

*The Commission **denies** the licensee's request to decrease from 40% to 35% the minimum level of Canadian popular music selections it must broadcast in each broadcast week, as well as between 6 a.m. and 6 p.m. from Monday to Friday.*

#### **Application**

1. Fabmar Communications Ltd. (Fabmar) filed an application to renew the broadcasting licence for the English-language commercial radio station CHWK-FM Chilliwack, which expires 31 August 2014. The Commission did not receive any interventions regarding this application.
2. Fabmar proposed to decrease the minimum level of Canadian popular music selections it must broadcast each week and between 6 a.m. and 6 p.m. Monday to Friday from 40% to 35%, which is the minimum level set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations). In support of its request, the licensee indicated that it had recently changed its music format from a rock to a classic hits format and that the library of suitable Canadian selections in the classic hits format was much smaller.

#### **Non-compliance**

3. In Broadcasting Decision 2013-531, the Commission noted that CHWK-FM was in apparent non-compliance with its condition of licence relating to over-and-above Canadian content development (CCD) contributions. The Commission stated that it would address this apparent non-compliance and the licensee's overall compliance with its regulatory obligations at its licence renewal.

4. Fabmar explained that the non-compliance was due to its misunderstanding of the way to allocate its CCD contributions in its first year of operations (February to 31 August 2009).<sup>1</sup> In addition, the licensee indicated that it wrongly assumed that it was required to begin making CCD payments to FACTOR only during the first full year of operations. The licensee indicated that it now had a clear understanding of the Regulations and its conditions of licence.
5. The Commission notes that the licensee incurred a shortfall of \$30,938 in its required over-and-above CCD contribution for the 2008-2009 broadcast year. Further, it made no contributions to FACTOR in that broadcast year, as required under its condition of licence relating to over-and-above CCD contributions. Accordingly, the Commission finds the licensee in non-compliance with this condition of licence.

### **Regulatory measures**

6. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to non-compliance by radio stations. Specifically, 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 of the non-compliance, the arguments provided by the licensee and the measures taken to rectify the situation.
7. In this case, the Commission notes that upon discovering the non-compliance, the licensee took immediate measures to ensure compliance with its conditions of licence and the Regulations. Further, in Broadcasting Decision 2013-531, the Commission approved the licensee's request for flexibility to allow the station to apply CCD over-expenditures totaling \$7,163 over the 2009-2010 to 2011-2012 broadcast years to the contributions required in its seventh year of operation. The licensee has now repaid all its CCD shortfalls, including the contribution to FACTOR.
8. Given the particular circumstances surrounding the non-compliance and the fact that the licensee made over-expenditures to CCD over the 2009-2010 to 2011-2012 broadcast years and took measures to address its future compliance with regulatory requirements, the Commission considers it appropriate to renew the licence for CHWK-FM for a full seven-year term.

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<sup>1</sup> As set out in Broadcasting Information Bulletin 2009-251, the Commission generally requires a licensee to make a pro-rated payment for the first year of operation to meet its over-and-above CCD commitment for that year. In other words, the licensee is required to pay an amount representing the number of months the station was in operation during that broadcast year. However, the total CCD amount for the station's first seven years of operation does not change. The licensee is required to contribute the remainder of its contribution for its first year of operation in its seventh full broadcast year.

## Licence amendment

9. The licence for CHWK-FM was granted as part of a competitive process. The Commission granted the licence to the applicant<sup>2</sup> in Broadcasting Decision 2008-116 based in part on the quality of the application proposed, including the level of Canadian content to be broadcast. The Commission further notes that it has not identified the classic hits format as a format for which Canadian popular music may be limited. Finally, the Commission finds that the licensee has shown neither that continuing with this requirement would put it at a financial disadvantage nor that a financial need exists for the requested amendment.
10. Accordingly, the Commission **denies** the licensee's request to decrease the minimum level of Canadian popular music selections it is required to broadcast each week and between 6 a.m. and 6 p.m. Monday to Friday from 40% to 35%.

## Conclusion

11. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CHWK-FM Chilliwack from 1 September 2014 to 31 August 2021. The terms and **conditions of licence** are set out in the appendix to this decision.
12. Further, as set out in Broadcasting Decision 2008-116, as amended by Broadcasting Decision 2013-531, the licensee must make a contribution of \$190,900 to CCD in the 2013-2014 broadcast year. Given that stations must file their annual returns by 30 November, the Commission requests that the licensee submit proof of payment for that contribution by **30 November 2014**. A **condition of licence** to that effect is set out in the appendix to this decision.

## Reminder

13. Pursuant to section 22 of the *Broadcasting 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

- *CHWK-FM Chilliwack – Licence amendment*, Broadcasting Decision CRTC 2013-531, 2 October 2013
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011

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<sup>2</sup> The licensee at the time was known as Radio CJVR Ltd. However, on 20 October 2010, it changed its name to Fabmar Communications Ltd.

- *Clarifications regarding Canadian content development contributions made by commercial radio stations*, Broadcasting Information Bulletin CRTC 2009-251, 5 May 2009
- *Licensing of a new radio station to serve Chilliwack, British Columbia*, Broadcasting Decision CRTC 2008-116, 30 May 2008

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

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### Terms, conditions of licence, expectation and encouragement for the English-language commercial radio programming undertaking CHWK-FM Chilliwack

#### Terms

The licence will take effect 1 September 2014 and expire 31 August 2021.

#### Conditions of licence

1. The licensee shall adhere to the conditions set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.
2. As an exception to sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations), the licensee shall devote at least 40% of its musical selections from content category 2 (Popular Music) each broadcast week and between 6 a.m. and 6 p.m. from Monday to Friday to Canadian selections broadcast in their entirety.

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

3. By no later than **30 November 2014**, the licensee shall file, in a form deemed acceptable by the Commission, all proof of payment regarding the required contribution of \$190,900 to Canadian content development that must be made in the broadcast year ending 31 August 2014 to comply with condition of licence 4 of Appendix 2 to *Licensing of a new radio station to serve Chilliwack, British Columbia*, Broadcasting Decision CRTC 2008-116, 30 May 2008, as amended by *CHWK-FM Chilliwack – Licence amendment*, Broadcasting Decision CRTC 2013-531, 2 October 2013.
4. To fulfill its original commitment to Canadian content development (CCD) set out in Appendix 2 of *Licensing of a new radio station to serve Chilliwack, British Columbia*, Broadcasting Decision CRTC 2008-116, 30 May 2008, the licensee shall, in addition to any contributions required under section 15 of the *Radio Regulations, 1986*, as amended from time to time, contribute the following amounts to CCD:
  - \$204,465 in the 2014-2015 broadcast year;<sup>3</sup> and
  - \$30,312 in the 2015-2016 broadcast year.

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<sup>3</sup> As noted in Broadcasting Decision 2013-531, the licensee may apply its overpayment of \$7,163 to the CCD requirement for the 2014-2015 broadcast year.

The licensee shall allocate 20% of this amount to FACTOR.

The remainder of this additional 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.

### **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.