



Broadcasting Decision CRTC 2014-427

PDF version

Route reference: 2014-143

Ottawa, 14 August 2014

8384860 Canada Inc.
Vancouver, British Columbia

Application 2013-1528-4, received 7 November 2013

CHLG-FM Vancouver – Licence renewal and amendments

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CHLG-FM Vancouver from 1 September 2014 to 31 August 2019. This short-term renewal will allow for an earlier review of the licensee's compliance with its conditions of licence.*

*The Commission **denies** the licensee's request to be relieved of its obligations regarding the broadcast of special interest music, including Canadian special interest musical selections.*

Application

1. 8384860 Canada Inc. (8384860) filed an application to renew the broadcasting licence for the English-language commercial radio station CHLG-FM¹ Vancouver, which expires 31 August 2014. The Commission did not receive any interventions regarding this application.
2. At the time of its application, 8384860 was a subsidiary of Bell Media Inc. In Broadcasting Decision 2014-129, the Commission approved the change of the effective control of 8384860 to Newcap Inc. (Newcap). As a result of this transaction, 8384860 became a subsidiary of Newcap.
3. As part of its renewal application, the licensee requested to be relieved from some of the requirements set out in its conditions of licence. Specifically, it requested that it no longer be required to devote at least:
 - 15% of its musical selections in each broadcast week to special interest music (category 3); and

¹ On 20 June 2014, the station changed its call sign from CHHR-FM to CHLG-FM.

- 40% of its category 3 selections, including 20% of its weekly selections from subcategory 34 (Jazz and blues), in each broadcast week and between 6 a.m. and 6 p.m. from Monday to Friday to Canadian selections.
4. In support of its request, the licensee indicated that these amendments were necessary to create a financially viable station. It also stated that the fulfillment of the requirements was challenging given the lack of new Canadian blues music or listeners in Vancouver for this type of music.

Non-compliance

5. In Broadcasting Notice of Consultation 2014-143, the Commission indicated that the licensee appeared to have failed to comply with its condition of licence relating to over-and-above contributions to Canadian content development (CCD) for the 2008-2009 and 2009-2010 broadcast years. Specifically, the station incurred a \$50,000 shortfall in its required CCD contribution in the 2008-2009 broadcast year, as well as a \$200,000 shortfall in the required payment to FACTOR in the 2009-2010 broadcast year. The CCD shortfalls, which occurred prior to Newcap's purchase of the station, were fulfilled in the 2011-2012 broadcast year. The licensee stressed that it had stringent CCD procedures to ensure compliance with these obligations going forward.
6. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to over-and-above CCD contributions for the 2008-2009 and 2009-2010 broadcast years.
7. In its notice, the Commission also noted that the licensee appeared to have failed to comply with its condition of licence concerning the broadcast of category 3 music by devoting only 14.1% of its musical selections to such music in the broadcast week of 8 to 14 September 2013. The licensee stated that the non-compliance was the result of a software error and committed to review the station's category 3 music library on a weekly basis to ensure that all selections qualify.
8. In light of the preceding, the Commission finds the licensee in non-compliance with its condition of licence concerning the broadcast of category 3 music for the broadcast week of 8 to 14 September 2013.

Licence amendments

9. With respect to the requested licence amendments to remove the requirements regarding the broadcast of category 3 music, including Canadian special interest musical selections, the Commission acknowledges that these amendments could provide some flexibility to the station and allow it to better compete in the Vancouver market. However, the Commission considers that factors such as the relatively modest level of experience of the station's initial operator (Shore Media Group), its standing as a stand-alone market operator and the competitive nature of the Vancouver radio market have also contributed to the financial difficulties encountered by the station.

The Commission also notes that Newcap was aware of the station's financial situation when it purchased the station. Considering that the station only began operations in June 2009 and has changed ownership several times, the Commission is of the view that it may have lacked the necessary programming continuity and that Newcap's experience as an established radio operator will provide for operational stability and programming continuity at the station.

10. Further, the Commission notes that the licence for the station was granted as part of a highly competitive process. The Commission granted the licence to Shore Media Group in Broadcasting Decision 2008-117 based in part on the quality of the application proposed, including the requirements to ensure that 15% of all music aired weekly is drawn from category 3 and to exceed the minimum Canadian content levels for such music set out in the *Radio Regulations, 1986* (the Regulations). Further, the Commission notes that it subsequently amended the Regulations to require all commercial stations to devote 20% of their weekly selections from subcategory 34 (Jazz and blues) to Canadian music, in accordance with paragraph 94 of the Commercial Radio Policy 2006 (see Broadcasting Public Notice 2008-67).
11. Given that the above-noted programming commitments were factors in the original licensing decision, the Commission considers that granting the requested amendments under the current circumstances would call into question the integrity of the licensing process.
12. Finally, the Commission notes that it is its usual practice to deny requests to be relieved from a requirement where the licensee is in non-compliance with this requirement as in the present case and that the applicant has not provided a compelling case for the Commission to deviate from that practice in this case.
13. In light of all of the above, the Commission **denies** the requested licence amendments.

Regulatory measures

14. 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.
15. Given the severity of the non-compliance, the Commission considers it appropriate to renew the licence for CHLG-FM for a shorter term of five years. This short-term renewal will allow for an earlier review of the licensee's compliance with its conditions of licence.

Conclusion

16. The Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CHLG-FM Vancouver from 1 September 2014 to 31 August 2019. The terms and **conditions of licence** are set out in the appendix to this decision.
17. Further, as set out in Appendix 4 to Broadcasting Decision 2008-117, the licensee must make a contribution of \$1 million 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.

Secretary General

Related documents

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2014-143, 26 March 2014
- *Change in the effective control of certain licensed broadcasting subsidiaries of Bell Media Inc.*, Broadcasting Decision CRTC 2014-129, 19 March 2014
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Amendments to the Radio Regulations, 1986 - Implementation of the Commercial Radio Policy 2006 and the Digital Radio Policy – Regulatory Policy*, Broadcasting Public Notice CRTC 2008-67, 23 July 2008
- *Licensing of new radio stations to serve the Vancouver radio market*, Broadcasting Decision CRTC 2008-117, 30 May 2008

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

Appendix to Broadcasting Decision CRTC 2014-427

Terms, conditions of licence, expectation and encouragement for the English-language commercial radio programming undertaking CHLG-FM Vancouver

Terms

The licence will expire 31 August 2019.

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, as amended from time to time.
2. As an exception to the percentage of Canadian musical selections set out in sections 2.2(3), 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations), the licensee shall devote to Canadian selections broadcast in their entirety:
 - a) at least 40% of its musical selections from each of content categories 2 (Popular Music) and 3 (Special Interest Music) in each broadcast week and between 6 a.m. and 6 p.m. from Monday to Friday; and
 - b) at least 20% of its musical selections from content subcategory 34 (Jazz and blues) in each broadcast week.

For the purposes of this condition, “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meanings as set out in the Regulations.
3. The licensee shall devote at least 15% of its music selections in each broadcast week to selections drawn from content category 3 (Special Interest Music).
4. 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 \$1 million to Canadian content development that must be made in the broadcast year ending 31 August 2014 to comply with condition of licence 5 of Appendix 4 to *Licensing of new radio stations to serve the Vancouver radio market*, Broadcasting Decision CRTC 2008-117, 30 May 2008.
5. To fulfill its original commitment to Canadian content development (CCD) set out in Appendix 4 to *Licensing of new radio stations to serve the Vancouver radio market*, Broadcasting Decision CRTC 2008-117, 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 \$1 million to CCD in the 2014-2015 broadcast year and \$833,333 (pro-rated from the first year of operation) in the 2015-2016 broadcast year.

Of this amount, the licensee shall allocate 20% to FACTOR and 10% to Aboriginal Voices Radio Inc. in each broadcast year.

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.