



Broadcasting Decision CRTC 2014-450

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Route reference: 2014-47 and 2014-56

Ottawa, 29 August 2014

Bell Media Inc.

Saint-Hyacinthe and Saint-Jean-sur-Richelieu, Quebec

Applications 2013-1548-2 and 2013-1549-0, received on 8 November 2013

CFEI-FM Saint-Hyacinthe and CFZZ-FM Saint-Jean-sur-Richelieu – Renewal of licence and withdrawal of single-station market status

*The Commission **renews** the broadcasting licence for the French-language commercial radio station CFEI-FM Saint-Hyacinthe from 1 September 2014 to 31 August 2020. This short-term renewal will allow for an earlier review of the licensee's compliance with the Radio Regulations, 1986.*

*The Commission also **renews** the broadcasting licence for the French-language commercial radio station CFZZ-FM Saint-Jean-sur-Richelieu from 1 September 2014 to 31 August 2021.*

*In addition, the Commission **withdraws** the single-station market status for the Saint-Hyacinthe and Saint-Jean-sur-Richelieu markets.*

Applications

1. Bell Media Inc. (Bell Media) filed applications to renew the broadcasting licences for the French-language commercial radio stations CFEI-FM Saint-Hyacinthe and CFZZ-FM Saint-Jean-sur-Richelieu, Quebec, which expire on 31 August 2014.
2. The Commission received a comment relating to CFEI-FM from Radio communautaire de la Rive-Sud inc. (Radio Rive-Sud) in which it reiterated a complaint filed in 2010. The Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) also filed a comment requesting that the Commission renew CFEI-FM's licence for a short licence term because of the station's apparent non-compliance. Bell Media did not respond to the interventions. The public record for these applications can be found on the Commission's website at www.crtc.gc.ca or by using the application numbers provided above.

Background

3. In Public Notice 1993-121 (the local programming policy), the Commission announced its policy on local programming for commercial radio stations and defined the concept of a single-station market. The Commission also compiled a list of stations operating in markets that meet the set definition. Pursuant to this policy and to Broadcasting Regulatory Policy 2009-62, the Commission generally requires, by condition of licence, that licensees of commercial FM radio stations refrain from soliciting local advertising for broadcast during any broadcast week when less than one-third of the programming aired is local. However, this requirement does not apply to licensees operating in single-station markets, as the Commission is of the view that, typically, these applicants serve very small communities that generate only modest revenues and that can only support a limited number of local programs.

Status of CFEI-FM Saint-Hyacinthe and CFZZ-FM Saint-Jean-sur-Richelieu

4. CFEI-FM and CFZZ-FM began operations in 1988 and 1992 respectively, before the concept of a single-station market was defined by the Commission. Further, these two stations are not on the list of single-station markets published in the local programming policy, and this status is not mentioned in any decision relating to licence renewal or to a change in effective control for either CFZZ-FM or for CFEI-FM since they first went on the air.
5. However, in Broadcasting Decision 2007-216, the most recent licence renewal for CFEI-FM Saint-Hyacinthe and CFZZ-FM Saint-Jean-sur-Richelieu, the stations' conditions of licence were amended and read as follows:
 1. The licence will be subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, with the exception of condition of licence number 5 and of condition of licence number 9 relating to the solicitation of local advertising, which does not apply to stations operating in a single-station market.
6. As a result of this change, the stations are not required by condition of licence to devote a third of their programming to local programming in order to solicit local advertising.

Complaint concerning advertising and local programming

7. On 3 March 2010, Radio Rive-Sud filed a complaint with the Commission concerning the programming broadcast by stations CFEI-FM and CFZZ-FM. In its complaint, Radio Rive-Sud argued that the programming broadcast by these stations was of regional interest (Montérégie), rather than local, and deplored the fact that this expansion into adjacent markets was to the detriment of the population of Saint-Hyacinthe and Saint-Jean-sur-Richelieu. Radio Rive-Sud also stated that it had observed a planned solicitation campaign of the clients of its station CHAA-FM Longueuil as well as of local advertisers.

8. In its reply to Radio Rive-Sud, dated 4 October 2010, the Commission noted that Astral Media Radio Inc.(Astral),¹ the owner of the stations at the time, had indicated that CFEI-FM and CFZZ-FM operate in single-station markets and are therefore not subject to the condition of licence that requires commercial stations to broadcast at least 42 hours of local programming over the broadcast week in order to solicit local advertising. The Commission also stated that upon a closer examination of the definition of “single-station market,” it questioned whether the status should apply to Saint-Hyacinthe and Saint-Jean-sur-Richelieu, as recognized in Broadcasting Decision 2007-216. It then stated that the continuation of this status may be discussed with Astral at the next licence renewal or earlier, as contemplated by section 9.(1)(c) of the *Broadcasting Act*.
9. As part of this proceeding, Radio Rive-Sud submitted a comment regarding CFEI-FM’s licence renewal application.

Non-compliance by CFEI-FM Saint-Hyacinthe

10. In Broadcasting Notice of Consultation 2014-47, the Commission noted that Bell Media was in apparent non-compliance with sections 2.2(9) and 2.2(10) of the *Radio Regulations, 1986* (the Regulations) with respect to the minimum levels of Canadian content and French-language vocal music (FVM) broadcast on CFEI-FM.
11. A review of performance and logger tapes of CFEI-FM for the week of 15 to 21 April 2012 revealed that the level of Canadian content broadcast by the station was 36.4% for the broadcast week reviewed and 32.3% (2.7% below the requirement) between 6 a.m. and 6 p.m., Monday to Friday of that same broadcast week. With respect to FVM, the levels broadcast were 65.3% over the week in question and 53.1% (1.9% below the requirement), between 6 a.m. and 6 p.m., Monday to Friday of that same broadcast week.
12. In a letter dated 22 June 2012, the Commission sought comments from Astral, the licensee at the time, regarding these instances of apparent non-compliance. In a letter dated 28 June 2012, Astral acknowledged CFEI-FM’s non-compliance with regulatory requirements with respect to the broadcast of Canadian content and FVM between 6 a.m. and 6 p.m., Monday to Friday.
13. Astral then explained that this situation was mostly the result of fill-in hosts who, over the course of the week in question, had on several occasions responded to special listener requests, which, for the most part, were for non-Canadian and non-French language vocal selections, without strictly adhering to the regulatory requirements applicable during the broadcast period. Astral assumed full responsibility for these instances of non-compliance and made sure to hold a meeting with the station’s program hosts and programming staff to remind them of the importance of respecting the station’s regulatory requirements at all times. The station also put in a place a

¹ Bell., the parent company of Bell Media, acquired broadcasting undertakings from Astral in 2013. See Broadcasting Decision 2013-310.

daily check of the lists of the music actually broadcast to correct any shortfalls over the broadcast week should exceptional situations occur during a given day.

14. According to Bell Media, the daily checks described by Astral have remained in place and will continue to be carried out over the licence term, as will the music list planning strategies described above.
15. In light of the foregoing, the Commission finds Bell Media in non-compliance with sections 2.2(9) and 2.2(10) of the Regulations for the 2011-2012 broadcast year with respect to CFEI-FM.

Regulatory measures

16. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach for dealing with 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 that led to the non-compliance, the arguments provided by the licensee, as well as the measures taken to rectify the situation.
17. The Commission notes that this is the first licence term in which CFEI-FM Saint-Hyacinthe is in non-compliance. It also notes the measures taken and maintained by Bell Media to avoid any future non-compliance, even if the non-compliance occurred when the station was under Astral's control. Therefore, the Commission considers it appropriate to grant CFEI-FM a short-term licence renewal of six years.

CFEI-FM and CFZZ-FM licence renewals

18. In the context of its applications, Bell Media indicated that, at present, CFEI-FM and CFZZ-FM broadcast approximately 76 and 50 hours, respectively, of local programming per broadcast week, in accordance with the provisions of the local programming policy. Bell indicated, however, that in order to maintain the flexibility necessary to offer programming that meets the expectations of its audience, the commitment made for each station is to meet the minimum threshold of 42 hours of local programming per broadcast week.
19. Bell Media stated that, in the interest of fairness with stations that have a similar status, the Commission should maintain the single-station market status for CFEI-FM and CFZZ-FM, and that both stations should continue to be exempt from the requirement to devote by condition of licence at least one-third of the broadcast week to local programming in order to solicit local advertising.
20. In response to the Commission's questions with respect to whether the single-station market status for Saint-Hyacinthe and Saint-Jean-sur-Richelieu should be maintained, Bell Media stated that, since 2007, the technical parameters of the two stations had not been modified in such a manner as to call into question their status as stations operating in a single-station market. According to the licensee, no new commercial

FM station has started broadcasting within its 3 mV/m contour. Bell Media also argued that, in the local programming policy, the Commission acknowledged that “changing circumstances, such as those resulting from future licensing action or possible station closures, may, by strict interpretation, render the definition of single-station market inapplicable to some of the above communities, or applicable to others. As a general rule, however, once exempted from the policy requirements by the Commission, stations such as those appearing on the above list will continue to be exempt.”

Commission’s analysis

21. In light of the foregoing, the Commission finds that the main issue it must consider is whether the Saint-Hyacinthe and Saint-Jean-sur-Richelieu markets each meet the definition of a single-station market.
22. According to the local programming policy, a single-station market is any community that only one commercial FM radio station has been licensed to serve, provided that (1) the 3 mV/m contour of this FM station does not encompass a significant part of a second community that another AM or FM commercial radio station has been licensed to serve and whose population is equal to, or greater than, that of the first community, and (2a) the community is not situated within the 3 mV/m contour of any other licensed commercial FM station, or (2b) if so situated, is a community whose distance (centre to centre) from the community served by the other station is 60 kilometres or more.
23. The Commission notes that the two radio markets are in compliance with the first part of the definition.
24. However, the communities served by CFEI-FM and CFZZ-FM are located within the 3 mV/m contours of commercial FM stations serving Montréal, including CKOI-FM, as well as that of CITÉ-FM-1, Sherbrooke. With respect to CFEI-FM, there is also an overlap with the 3 mV/m contour of CFXM-FM Granby. Moreover, the communities of Saint-Hyacinthe and Saint-Jean-sur-Richelieu are located less than 60 km from Montreal. Saint-Hyacinthe is located 37 km from Granby.
25. In light of the foregoing, the Commission finds that the Saint-Hyacinthe and Saint-Jean-sur-Richelieu radio markets do not meet the definition of a single-station market and, consequently CFEI-FM and CFZZ-FM do not meet the criteria that would permit them to be identified as station operating in single station markets.

Conclusion

26. In light of all of the above, the Commission **renews** the broadcasting licence for the French-language commercial radio programming undertaking CFEI-FM Saint-Hyacinthe from 1 January 2014 to 31 August 2020. This short-term renewal will enable the Commission to assess, at an earlier date, the licensee’s compliance with the regulatory requirements.

27. In addition, the Commission **renews** the broadcasting licence for the French-language commercial radio programming undertaking CFZZ-FM Saint-Jean-sur-Richelieu from 1 September 2014 to 31 August 2021. The licensee shall adhere to the **conditions of licence** set out in Broadcasting Regulatory Policy 2009-62, as amended from time to time, and to the conditions set out in the appendix to this decision.
28. With respect to the single-station market status for the Saint-Hyacinthe and Saint-Jean-sur-Richelieu radio markets, the Commission considers that the status is not justified. Accordingly, it withdraws the status for both markets. As stated above, CFEI-FM and CFZZ-FM will thus be subject to the standard conditions of licence set out in Broadcasting Regulatory Policy 2009-62, including the following condition, from which they were exempt in the past:

Subject to condition of licence 5, for commercial FM stations serving markets other than single-station markets (Local programming policy for FM radio – Definition of a single-station market, Public Notice CRTC 1993-121, 17 August 1993) the licensee shall refrain from soliciting or accepting local advertising for broadcast during any broadcast week when less than one-third of the programming aired is local. The definition of local programming shall be as set out in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006, as amended from time to time.

Reminders

29. The definition of local programming, as set out in Broadcasting Public Notice 2006-158, reads as follows:
- Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.
- In their local programming, licensees must include spoken word material of direct and particular relevance to the community served, such as local news, weather and sports, and the promotion of local events and activities.
30. The licensee must fulfill all of its remaining tangible benefits commitments pursuant to the terms set out in Broadcasting Decision 2014-62.
31. Pursuant to section 22 of the *Broadcasting Act*, the broadcasting licences renewed in this decision will cease to have any force or effect if the broadcasting certificates issued by the Department of Industry lapse.

Employment equity

32. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Employment and Social Development, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Astral broadcasting undertakings – Change of effective control – Follow-up to the Astral-BCE transaction, Broadcasting Decision 2014-62, 17 February 2014*
- *Notice of applications received, Broadcasting Notice of Consultation CRTC 2014-47, 7 February 2014*
- *Astral broadcasting undertakings – Change of effective control, Broadcasting Decision CRTC 2013-310, 27 June 2013*
- *Revised approach to non-compliance by radio stations, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011*
- *Conditions of licence for commercial AM and FM radio stations, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009*
- *Radio programming undertakings - Licence renewals, Broadcasting Decision CRTC 2007-216, 6 July 2007*
- *Commercial Radio Policy 2006, Broadcasting Public Notice CRTC 2006-158, 15 December 2006*
- *Local programming policy for FM radio - definition of a single-station market, Public Notice CRTC 1993-121, 17 August 1993*

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

Appendix to Broadcasting Decision CRTC 2014-450

Terms and conditions of licence for the French-language commercial radio programming undertakings CFEI-FM Saint-Hyacinthe and CFZZ-FM Saint-Jean-sur-Richelieu

Terms

The licence for CFEI-FM Saint-Hyacinthe will expire 31 August 2020.

The licence for CFZZ-FM Saint-Jean-sur-Richelieu will 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, as amended from time to time.
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986*, in any broadcast week where at least 90% of musical selections from content category 2 that it broadcasts are selections released before 1 January 1981:
 - devote, in that broadcast week, 30% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety; and
 - devote, between 6 a.m. and 6 p.m., in the period from Monday to Friday of the same broadcast week, 30% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

The licensee will also be responsible for specifying, on the music lists it provides to the Commission, the year of release for all musical selections it broadcasts.

For the purposes of this condition, the terms “broadcast week,” “content category” and “musical selection” shall have the meaning set out in section 2 of the *Radio Regulations, 1986*.

3. The licensee shall provide commercially reasonable access to advertising availabilities to unrelated operators of broadcasting undertakings and telecommunications service providers.
4. a) The licensee shall pay tangible benefits in respect of any shortfall in the tangible benefits for the radio broadcasting undertakings to be divested by BCE Inc. (BCE) in accordance with *Astral broadcasting undertakings – Change of effective control*, Broadcasting Decision CRTC 2013-310, 27 June 2013, between \$11.05 million attributed to those undertakings and the aggregate value of the tangible benefits to be paid by purchasers of those undertakings as determined by the Commission in the decision approving the transfer of those undertakings by BCE (“shortfall”).
b) In the event of a shortfall, the licensee shall file with the Commission a proposal for the payment of the resulting tangible benefits within 30 days of the Commission’s decisions approving the transfer of the last of those undertakings by BCE.