



## Broadcasting Decision CRTC 2016-297

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Reference: 2016-48

Ottawa, 29 July 2016

### **CIMM-FM Radio Ltd.**

Ucluelet, British Columbia

### **CHMZ-FM Radio Ltd.**

Tofino, British Columbia

*Application 2015-0869-9, received 12 August 2015*

*Application 2015-1036-3, received 2 September 2015*

## **CIMM-FM Ucluelet and CHMZ-FM Tofino – Licence renewals**

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CIMM-FM Ucluelet from 1 September 2016 to 31 August 2019.*

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CHMZ-FM Tofino from 1 September 2016 to 31 August 2019.*

*These short-term renewals will allow for an earlier review of the licensees' compliance with their conditions of licence and with the Commission's regulatory requirements.*

### **Applications**

1. CIMM-FM Radio Ltd. (CIMM-FM Radio) filed an application (2015-0869-9) to renew the broadcasting licence for the English-language commercial radio station CIMM-FM Ucluelet, British Columbia, which expires 31 August 2016. CHMZ-FM Radio Ltd. (CHMZ-FM Radio) filed an application (2015-1036-3) to renew the broadcasting licence for the English-language commercial radio station CHMZ-FM Tofino, British Columbia, which also expires 31 August 2016. The Commission did not receive any interventions regarding these applications.
2. Both CIMM-FM Radio and CHMZ-FM Radio are wholly owned and controlled by Mr. Matthew McBride.

### **CIMM-FM Ucluelet**

### **Background**

3. When it last renewed the broadcasting licence for CIMM-FM in 2013 (see Broadcasting Decision 2013-452), the Commission determined that CIMM-FM Radio was in non-compliance with its condition of licence relating to Canadian talent

development (CTD) contributions, for the 2007-2008 through 2010-2011 broadcast years. The Commission renewed the station's broadcasting licence for a short-term period, until 31 August 2016, to allow for an earlier review of the licensee's compliance with the *Radio Regulations, 1986* (the Regulations) and its conditions of licence.

### **Current non-compliance**

4. In Broadcasting Notice of Consultation 2016-48, the Commission noted CIMM-FM Radio's apparent non-compliance with various regulatory requirements. Specifically, the station's annual return for the 2012-2013 broadcast year was incomplete, missing financial statements (which were submitted after the prescribed deadline). Further, the licensee failed to provide requested monitoring materials for programming broadcast on CIMM-FM by the deadline of 8 September 2014, as requested by letter in August 2014 (to which the licensee did not reply). The Commission subsequently sent a letter in September 2014 to CIMM-FM Radio as a reminder of the above request, to which the licensee indicated that the requested materials were forthcoming. However, the licensee failed once again to provide the requested materials.
5. CIMM-FM Radio stated that it had difficulties with the Commission's Data Collection System (DCS), and that it believed all of the required documentation for annual returns had been filed. The licensee also cited personal reasons for the non-compliance. To ensure future compliance with requirements relating to the provision of monitoring materials, CIMM-FM Radio indicated that it has hired a person responsible for supervising the logging system.
6. In light of the above, and having taken into account the licensee's submissions, the Commission finds CIMM-FM Radio in non-compliance, for the 2012-2013 broadcast year, with the following sections of the Regulations: 9(2) (submission of complete annual returns); 8(1), 8(4) through 8(6), and 9(3) (filing of program logs, logger tapes and music lists); and 9(4) (responding to Commission requests). Measures dealing with such non-compliance and the licensee's submissions are addressed below.

### **CHMZ-FM Tofino**

#### **Background**

7. In Broadcasting Decision 2012-694, the Commission approved an application by CHMZ-FM Radio for authority to acquire from McBride Communications & Media Inc. and Umeeek Human Resources Development Inc., partners in West Island Radio Enterprises General Partnership, the assets of CHMZ-FM, and for a new broadcasting licence to continue the operation of the station.
8. In that decision, the Commission determined that the station was in non-compliance with its condition of licence relating to CTD contributions, as well as regulatory requirements relating to the ownership and control of CHMZ-FM, Canadian content

development (CCD) contributions, and the filing of annual returns. In light of the licensee's actions towards the above non-compliance, and further to a discussion with the licensee at the public hearing during which the licence renewal application for CHMZ-FM was heard, the Commission determined that further regulatory action was not necessary. Nevertheless, it granted a new broadcasting licence for the station for a short-term period, until 31 August 2016, to allow for an earlier review of the licensee's compliance with the Regulations and its conditions of licence.

### **Current non-compliance**

9. In Broadcasting Notice of Consultation 2016-48, the Commission noted CHMZ-FM Radio's apparent non-compliance with requirements relating to the submission of radio monitoring material. In a letter dated 24 March 2015, various monitoring materials were requested for programming broadcast on the station during the week of 15 to 21 March 2015. However, the musical selections listed in the printed music lists submitted by the licensee were inappropriately classified. Further, the submitted audio recordings were incomplete, making it impossible for the Commission to monitor the station's programming and confirm the validity of the information contained in the printed materials.
10. CHMZ-FM Radio explained that restricted access to the building in which the studios are located resulted in a minimal amount of programming being provided for the broadcast week in question. It stated that the incomplete audio recordings were the result of machine failure caused by flood damage to the station equipment. The licensee added that the situation has been rectified through the relocation of studio operations and the purchase of a new logging and recording system. CHMZ-FM Radio filed evidence of that purchase on 5 February 2016. In regard to a possible short-term licence renewal, the licensee stated that it would accept a three-year renewal term for CHMZ-FM due to the above-noted non-compliance.
11. In light of the above, and having taken into account the licensee's submissions, the Commission finds CHMZ-FM Radio in non-compliance with sections 8(4), 8(5) and 9(3) of the Regulations, relating to the filing of program logs, logger tapes and music lists. Measures dealing with such non-compliance and the licensee's submissions are addressed below.

### **Regulatory measures**

12. 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 quantity, recurrence and seriousness of the 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.

13. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. Compliance with deadlines for the filing of complete annual returns is important because it enables the Commission to monitor a licensee's performance and compliance with regulations and licence requirements.
14. Further, a licensee that does not file requested material in a timely manner, or does not file such material at all, affects the ability of the Commission to adequately perform its duty to independently confirm the licensee's adherence to regulatory and licence requirements. 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. Given the above, the Commission views any non-compliance as a very serious matter.
15. As set out in Broadcasting Regulatory Policy 2014-554, for stations that are in non-compliance, the following measures may be applied, on a case-by-case basis, depending on the nature of the non-compliance:
  - renew the licence for a short term;
  - impose additional conditions of licence;
  - call the licensee to a public hearing to respond to and discuss apparent non-compliance;
  - following a public hearing, issue a mandatory order requiring the licensee to comply with regulatory requirements. Such orders are made orders of the Federal Court and can be enforced through contempt of court proceedings;
  - suspend the licence;
  - not renew the licence; and
  - revoke the licence.
16. In that same regulatory policy, the Commission introduced further measures to address the potential harm that could be caused to the broadcasting system by non-compliance with regulations and conditions of licence. For serious cases of non-compliance, the Commission considered it appropriate, in certain circumstances, to require broadcasters found to be in non-compliance to announce that finding on air, which is an approach similar to that used by the Canadian Broadcast Standards Council (CBSC).
17. In regard to the present cases, the Commission considers it appropriate to grant CIMM-FM and CHMZ-FM short renewal terms of three years, which will allow for an earlier review of the licensees' compliance with their conditions of licence and with the Regulations.

18. Further, given the serious and repeated nature of CIMM-FM's and CHMZ-FM's non-compliance, the Commission finds it appropriate to require the licensees to broadcast three times a day, and to distribute in a reasonable manner between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive days, within the 14 day period following the beginning of the new licence term, an announcement regarding their non-compliance. To confirm compliance with this requirement, the licensees must provide to the Commission the audio recordings for the broadcast days during which the announcement was broadcast, and file the following by no later than 14 days following the final broadcast of the announcement:

- for CIMM-FM, a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CIMM-FM Ucluelet*, set out in Appendix 3 to this decision;
- for CHMZ-FM, a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CHMZ-FM Tofino*, set out in Appendix 4 to this decision.

19. **Conditions of licence** to that effect are set out in Appendices 1 (CIMM-FM) and 2 (CHMZ-FM) to this decision.

20. Should CIMM-FM Radio and CHMZ-FM Radio again breach their regulatory requirements, the Commission may consider recourse to additional measures as noted above, including calling the licensees to a public hearing, or the suspension, non-renewal or revocation of the broadcasting licences for the stations under sections 9 and 24 of the *Broadcasting Act* (the Act).

## Conclusion

21. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CIMM-FM Ucluelet from 1 September 2016 to 31 August 2019. The **conditions of licence** are set out in Appendix 1 to this decision.

22. Further, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CHMZ-FM Tofino from 1 September 2016 to 31 August 2019. The **conditions of licence** are set out in Appendix 2 to this decision.

## Reminder

23. Pursuant to section 22 of the 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.

Secretary General

### **Related documents**

- *Renewal of the broadcasting licences for certain radio stations – Licensees in apparent repeated non-compliance*, Broadcasting Notice of Consultation CRTC 2016-48, 9 February 2016
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *CIMM-FM Ucluelet – Licence renewal*, Broadcasting Decision CRTC 2013-452, 28 August 2013
- *CHMZ-FM Tofino – Acquisition of assets*, Broadcasting Decision CRTC 2012-694, 20 December 2012

*\*This decision and the appropriate appendices are to be appended to each licence.*

## Appendix 1 to Broadcasting Decision CRTC 2016-297

### Terms, conditions of licence and encouragement for the English-language commercial radio programming undertaking CIMM-FM Ucluelet, British Columbia

#### 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 well as to the conditions set out in the broadcasting licence for the undertaking.
2. During each broadcast week, the licensee shall devote a minimum of three hours to programming in Aboriginal languages and an additional three hours for use by local First Nations groups.
3. In regard to the licensee's non-compliance with the *Radio Regulations, 1986*, as set out in the present decision:
  - a) The licensee shall broadcast the following announcement three times a day, distributed in a reasonable manner between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive days, within the 14-day period immediately following 1 September 2016, the beginning of the new licence term:
    - Radio frequencies are a limited public resource. Holding a broadcasting licence is a privilege, and broadcasters are required to abide by a number of regulations and conditions of licence in order to operate a radio station. In Broadcasting Decision 2016-297, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986*. The instances of non-compliance are a recurring issue. CIMM-FM has put measures in place to ensure that the non-compliances in question do not reoccur.
  - b) The licensee shall provide to the Commission the audio recordings for the broadcast days during which the announcement was broadcast, and file a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CIMM-FM Ucluelet*, set out in Appendix 3 to *CIMM-FM Ucluelet and CHMZ-FM Tofino – Licence renewals*, Broadcasting Decision CRTC 2016-297, 29 July 2016, by no later than 14 days following the final broadcast of the announcement.

## **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.

## Appendix 2 to Broadcasting Decision CRTC 2016-297

### Terms, conditions of licence and encouragement for the English-language commercial radio programming undertaking CHMZ-FM Tofino, British Columbia

#### 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 well as to the conditions set out in the broadcasting licence for the undertaking.
2. In regards to the licensee's non-compliance with the *Radio Regulations, 1986*, as set out in the present decision:
  - a) The licensee shall broadcast the following announcement three times a day, distributed in a reasonable manner between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive days, within the 14-day period immediately following 1 September 2016, the beginning of the new licence term:
    - Radio frequencies are a limited public resource. Holding a broadcasting licence is a privilege, and broadcasters are required to abide by a number of regulations and conditions of licence in order to operate a radio station. In Broadcasting Decision 2016-297, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986*. The instances of non-compliance are a recurring issue. CHMZ-FM has put measures in place to ensure that the non-compliances in question do not reoccur.
  - b) The licensee shall provide to the Commission the audio recordings for the broadcast days during which the announcement was broadcast, and file a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CHMZ-FM Tofino*, set out in Appendix 4 to *CIMM-FM Ucluelet and CHMZ-FM Tofino – Licence renewals*, Broadcasting Decision CRTC 2016-297, 29 July 2016, by no later than 14 days following the final broadcast of the announcement.

#### 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.

## Appendix 3 to Broadcasting Decision CRTC 2016-297

### Attestation as to the broadcast of the non-compliance announcement on CIMM-FM Ucluelet

In regard to the requirements set out in condition of licence 3 in Appendix 1 to *CIMM-FM Ucluelet and CHMZ-FM Tofino – Licence renewals*, Broadcasting Decision CRTC 2016-297, 29 July 2016, I, \_\_\_\_\_ (NAME), on behalf of \_\_\_\_\_ (LICENSEE), certify that the announcement regarding CIMM-FM Ucluelet’s non-compliance with the *Radio Regulations, 1986* was duly broadcast three times a day, and distributed in a reasonable manner between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive days, within the 14-day period immediately following 1 September 2016, the beginning of the new licence term, as follows:

<b>First date of broadcast:</b>		Times	1:	2:	3:
<b>Second date of broadcast:</b>		Times	1:	2:	3:
<b>Third date of broadcast:</b>		Times	1:	2:	3:
<b>Fourth date of broadcast:</b>		Times	1:	2:	3:
<b>Fifth date of broadcast:</b>		Times	1:	2:	3:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Appendix 4 to Broadcasting Decision CRTC 2016-297

### Attestation as to the broadcast of the non-compliance announcement on CHMZ-FM Tofino

In regard to the requirements set out in condition of licence 2 in Appendix 2 to *CIMM-FM Ucluelet and CHMZ-FM Tofino – Licence renewals*, Broadcasting Decision CRTC 2016-297, 29 July 2016, I, \_\_\_\_\_ (NAME), on behalf of \_\_\_\_\_ (LICENSEE), certify that the announcement regarding CHMZ-FM Tofino’s non-compliance with the *Radio Regulations, 1986* was duly broadcast three times a day, and distributed in a reasonable manner between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive days, within the 14-day period immediately following 1 September 2016, the beginning of the new licence term, as follows:

<b>First date of broadcast:</b>		Times	1:	2:	3:
<b>Second date of broadcast:</b>		Times	1:	2:	3:
<b>Third date of broadcast:</b>		Times	1:	2:	3:
<b>Fourth date of broadcast:</b>		Times	1:	2:	3:
<b>Fifth date of broadcast:</b>		Times	1:	2:	3:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date