



## Broadcasting Decision CRTC 2023-236

PDF version

References: Part 1 licence renewal application posted on 28 October 2022; Part 1 application posted on 27 October 2022

Ottawa, 3 August 2023

**Rogers Media Inc.**  
Edmonton, Alberta

*Public records: 2022-0777-9 and 2022-0788-6*

### **CHBN-FM Edmonton – Licence renewal and licence amendment**

#### **Summary**

The Commission **renews** the broadcasting licence for the English-language commercial radio station CHBN-FM Edmonton, Alberta, from 1 September 2023 to 31 August 2030.

In addition, the Commission **denies** the licensee's request to delete its condition of service requiring it to devote at least 40% of its musical selections from content category 2 (Popular Music) during the broadcast week and between 6:00 a.m. and 6:00 p.m. from Monday to Friday to Canadian selections.

#### **Applications**

1. The Commission has the authority, pursuant to subsections 9(1) and 9.1(1) of the *Broadcasting Act*, to issue and renew licences and to make orders imposing conditions on the carrying on of a broadcasting undertaking that it considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*.
2. On 10 June 2022, the Commission issued Broadcasting Notice of Consultation 2022-152,<sup>1</sup> which listed radio stations for which the broadcasting licences would expire 31 August 2023 and therefore needed to be renewed to continue their operations. In that notice of consultation, the Commission requested that the licensees of those stations submit renewal applications for their broadcasting licences.
3. In response, Rogers Media Inc. (Rogers) filed an application (2022-0777-9) to renew the broadcasting licence for the English-language commercial radio station CHBN-FM Edmonton, Alberta, which expires 31 August 2023.<sup>2</sup> The Commission

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<sup>1</sup> As corrected in Broadcasting Notice of Consultation 2022-152-1.

<sup>2</sup> The original licence expiry date for the station was 31 August 2021. The licence was administratively renewed until 31 August 2022 as a result of Broadcasting Decision 2020-381 and until 31 August 2023 as a result of Broadcasting Decision 2021-297.

received a procedural request and an intervention in opposition from the Forum for Research and Policy in Communications (FRPC), to which the licensee replied. The intervention related to Rogers' response to the procedural request.

4. Rogers filed a second application (2022-0788-6) to amend the broadcasting licence for CHBN-FM. Specifically, the licensee proposed to delete the condition of service requiring it to devote at least 40% of its musical selections from content category 2 (Popular Music) during the broadcast week and between 6:00 a.m. and 6:00 p.m. from Monday to Friday to Canadian selections. The Commission received an intervention in support of the licence amendment application. It also received an intervention in opposition from the FRPC, to which Rogers replied.

### **Non-compliance**

5. Paragraph 10(1)(i) of the old *Broadcasting Act*, which was in effect while the licensee's application was being considered, granted the Commission the authority, in furtherance of its objects, to make regulations requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify.
6. Pursuant to this authority, the Commission made subsection 8(5) of the *Radio Regulations, 1986* (the Regulations), which specifies that a licensee shall retain a clear and intelligible audio recording or other exact copy of all matters broadcast for any period specified by the Commission.
7. Subsection 49(2) of the *Online Streaming Act*, which made a certain number of amendments to the *Broadcasting Act* when it came into force on 27 April 2023, stipulates that any regulation made pursuant to paragraph 10(1)(i) of the old *Broadcasting Act* is deemed to be an order made under section 9.1 of the new *Broadcasting Act*. Accordingly, subsection 8(5) of the Regulations is considered to be a condition of service pursuant to paragraph 9.1(1)(o) of the new *Broadcasting Act*, and licensees continue to be subject to this requirement.
8. According to Commission records, audio recordings submitted by the licensee were missing a total of two hours and 45 minutes over the week of 3 to 9 November 2019.
9. The licensee stated that when it was first notified of an issue with the audio recordings, it discovered that the audio files had been corrupted during the retrieval and downloading process. The licensee explained that a new employee, despite receiving training instructions, did not save all of the audio segments in the proper file format when creating the audio files and did not listen to all of the files or have them reviewed by another employee before submitting them.
10. The licensee stated that it was unable to provide back-up copies of the missing segments because it does not maintain back-up files for more than 150 days and that period had already elapsed when they got notified of the issue.

11. The licensee indicated that it has created written step-by-step instructions to ensure that all employees understand how to properly pull and save digital audio files. Additionally, the station is extending its storage capacity to 12 months to ensure that, should there be future issues with the provision of logs, back-up is available for an extended period of time. Furthermore, the licensee has implemented an additional procedural safeguard when preparing performance evaluation materials for submission to screen for potential audio issues.
12. In light of the above, the Commission finds the licensee in non-compliance with subsection 8(5) of the Regulations.

### **Regulatory measures**

13. 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 number, recurrence and seriousness of the instances of 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.
14. In regard to CHBN-FM and the licensee's non-compliance with subsection 8(5) of the Regulations, the Commission considers that the licensee understands its obligations relating to the filing of audio recordings and monitoring materials and has put in place measures that should enable it to ensure the station's compliance in the future. Accordingly, the Commission finds that no further measures are warranted in regard to this non-compliance.

### **Licence amendment**

15. The licensee requested the removal of the following condition of service, set out in Broadcasting Decision 2014-138:

As an exception to sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations) and subject to section 2.2(6) of these regulations, the licensee shall devote at least 40% of its musical selections from content category 2 (Popular Music) during the broadcast week and between 6:00 a.m. and 6:00 p.m. from Monday to Friday to Canadian selections.
16. Rogers stated that it is subject to a threshold that is higher than the regulatory minimum as a result of a condition of service that was imposed as part of the approval of an application by CTV Limited and Milestone Broadcasting (Edmonton) Limited, partners in a general partnership carrying on business as Edmonton Urban Partnership, to operate a new radio station in Edmonton, set out in Broadcasting Decision 2004-133.
17. In Broadcasting Decision 2010-972, the Commission approved Rogers' acquisition of CHBN-FM. Rogers agreed to continue the operation of the undertaking under the same terms and conditions as those in effect at the time.

18. In Rogers' view, the greater 40% Canadian musical selections threshold creates an undue burden on its station for no other reason other than implementing a condition of service that was imposed in 2004 when the licensing application was first approved. Rogers stated that a minimum of 35% threshold for the next licence term would provide the flexibility to adjust to changes while maintaining a baseline that was established by the Commission for all commercial radio stations.
19. In its intervention, the FRPC argued that Rogers has failed to demonstrate how reducing the level of Canadian musical selections will improve CHBN-FM's performance given that Rogers stated that the COVID-19 pandemic is one key cause of the station's financial performance.
20. In general, the Commission expects licensees of radio stations that were granted licences through a competitive process to maintain their original conditions of service for at least the first licence term and to be in compliance with the conditions of service they are seeking to amend or delete. The Commission also generally expects licensees to demonstrate economic need for this type of licence amendment.
21. In this regard, CHBN-FM has been in operation for multiple licence terms and is also in compliance with the condition of service it is seeking to have removed.
22. However, Rogers did not demonstrate in its application how a reduction from 40% to 35% of Canadian musical selections broadcast would improve the financial situation of CHBN-FM.
23. Furthermore, Rogers stated that the proposed amendment would not result in a change to existing financial projections and that it is not necessary for the financial viability of CHBN-FM.
24. Radio stations play an important role in showcasing the work of Canadian artists. The radio stations contribute to the fulfilment of the objective set out in subparagraph 3(1)(d)(ii) of the *Broadcasting Act*, which provides that the Canadian broadcasting system should encourage the development of Canadian expression by displaying Canadian talent in entertainment programming.
25. The Commission notes that it has not generally been disposed to approve reductions in Canadian musical selections levels, including in cases where the requirements are above the minimum regulatory requirements, except in exceptional circumstances.
26. In regard to CHBN-FM, the higher Canadian musical selections commitment was made by the previous owner in the context of a competitive licensing process and was an important factor in the Commission's decision to grant the broadcasting licence to the applicant. When Rogers acquired the station in 2010, it agreed to continue operating under the same terms and conditions. The Commission considers that the commitments made at the time of the original licensing, and reaffirmed when the station was acquired by Rogers remain relevant and would serve to maintain programming diversity in the Edmonton market.

27. Accordingly, the Commission finds that the circumstances do not warrant deviating from the Commission's general approach to uphold the 40% commitment to Canadian musical levels.

## **Conclusion**

28. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CHBN-FM Edmonton, Alberta, from 1 September 2023 to 31 August 2030.

29. The Commission **denies** the licensee's request to amend its condition of service requiring it to devote at least 40% of its musical selections from content category 2 (Popular Music) during the broadcast week and between 6:00 a.m. and 6:00 p.m. from Monday to Friday.

30. Pursuant to subsection 49(1) of the *Online Streaming Act*, the conditions of licence that existed prior to the date of royal assent of that Act are deemed to be conditions imposed under an order made pursuant to section 9.1 of the new *Broadcasting Act*. As such, the conditions of licence for this licensee became conditions of service and continue to apply to the licensee. For ease of reference, the **conditions of service** for this licensee are set out in the appendix to this decision. Further, the formal broadcasting licence document issued to a licensee may set out additional requirements for the undertaking, relating to, for example, technical parameters or prohibitions on transfer. The licensee shall also adhere to any such requirements set out in the broadcasting licence for the undertaking.

## **Procedural request**

31. On 22 November 2022, the FRPC filed a procedural request in which it requested a copy of the record on employment equity that is mentioned at question three of the renewal application form, which reads as follows:

The licensee is subject to the *Employment Equity Act* (applicable to federally regulated employers with 100 or more employees). The licensee keeps a record of the total number and percentage of on-air employees (full-time, part-time and temporary), including voice-overs, from each designated group, as well as the total number of all on-air employees who were employed in the last year. A copy of this record is available upon request.

32. On 16 January 2023, Rogers filed a response to the procedural request in which it provided a link to the Department of Employment and Social Development's (also known as Employment and Social Development Canada [ESDC]) web page where these reports would normally be found. Rogers indicated that the reports filed with ESDC do not require or contain the specific breakdown of on-air employees described at question three of the renewal application form.

33. The Commission does not examine employment equity practices of licensees with 100 employees or more since these licensees are subject to the *Employment Equity Act*, which falls under the jurisdiction of ESDC.
34. However, the Commission considers that Rogers could have been more forthcoming by providing the reports it has available. Accordingly, the Commission encourages the licensee to provide information when requested.

### **Reminders**

35. The Commission reminds the licensee that it must comply at all times with the requirements set out in the *Broadcasting Act*, the Regulations, its licence, and its conditions of service.
36. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. The submission of complete and accurate radio monitoring materials enables the Commission to conduct an analysis of a station's programming to verify compliance with the Regulations and conditions of service. The retention of these radio monitoring materials makes it possible for the Commission to investigate a station's programming in the case of complaints. As such, any licensee that does not file the requested material in a timely manner, files material that is incomplete or does not file the material at all, affects the ability of the Commission to adequately perform its duty to independently confirm the licensee's adherence to its regulatory obligations. 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.

### **Local news**

37. Radio stations are an important daily source of local news and information for communities. Carrying on a broadcasting undertaking comes with conditions, regulatory obligations and responsibilities, which include contributing to the Canadian broadcasting system by ensuring that Canadians have access to local programming that reflects their needs and interests and informs them of important current issues.
38. Although Broadcasting Regulatory Policy 2022-332 does not specify a minimum level of weekly news to be broadcast, it does specify the type of spoken word material that must be included as part of a station's local programming. In accordance with that regulatory policy, the Commission reminds the licensee that its station, in its local programming, must incorporate spoken word material of direct and particular relevance to the communities served, and that this programming must include local news, weather, sports coverage, and the promotion of local events and activities. In addition, the Commission encourages the licensee to ensure that a reasonable amount of daily local news and information is made available to those communities.

## **Force and effect of broadcasting licences**

39. Pursuant to section 22 of the *Broadcasting Act*, the broadcasting licence renewed in this decision will cease to have any force or effect should the broadcasting certificate issued by the Department of Industry (also known as Innovation, Science and Economic Development Canada) lapse.

## **Practical guide for radio licence renewals**

40. To learn more about the Commission's review of compliance with requirements relating to radio licences, and about the radio renewal process, please consult the Commission's [Practical guide to radio licence renewals](#).

Secretary General

## **Related documents**

- *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022
- *Call for licence renewal applications – Submission of renewal applications for broadcasting licences of radio stations expiring on 31 August 2023 – Regular renewal process*, Broadcasting Notice of Consultation CRTC 2022-152, 10 June 2022, as corrected by Broadcasting Notice of Consultation CRTC 2022-152-1, 18 August 2022
- *Various commercial radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2021-297, 30 August 2021
- *Various radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2020-381, 27 November 2020
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Various commercial radio stations – Licence renewals*, Broadcasting Decision CRTC 2014-138, 25 March 2014
- *CHBN-FM Edmonton – Acquisition of assets*, Broadcasting Decision CRTC 2010-972, 23 December 2010
- *Urban FM radio station in Edmonton*, Broadcasting Decision CRTC 2004-133, 5 April 2004

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

## Appendix to Broadcasting Decision CRTC 2023-236

### Terms, conditions of service and expectations for the English-language commercial radio programming undertaking CHBN-FM Edmonton, Alberta

#### Terms

The licence will expire 31 August 2030.

#### Conditions of service

1. The licensee shall adhere to the conditions of service set out in *Revised conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2022-334, 7 December 2022. Further, the licensee shall adhere to the requirements set out in the broadcasting licence for the undertaking.
2. The licensee shall adhere to all applicable requirements set out in the *Radio Regulations, 1986*, that were made under paragraph 10(1)(a) or under paragraph 10(1)(i) of the old *Broadcasting Act*.<sup>3</sup>
3. As an exception to subsections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations) and subject to subsection 2.2(6) of the Regulations, the licensee shall devote at least 40% of its musical selections from content category 2 (Popular Music) during the broadcast week and between 6:00 a.m. and 6:00 p.m. from Monday to Friday to Canadian selections.

For the purpose 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.

#### Expectations

##### Cultural diversity

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.

##### Canadian emerging artists

Consistent with the Commission’s determination set out in *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022 (Broadcasting Regulatory Policy 2022-332), the Commission expects the licensee to devote, in each broadcast week, at least 5% of the station’s musical selections to selections from Canadian emerging artists broadcast in their entirety. The licensee should

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<sup>3</sup> Pursuant to subsection 49(2) of the *Online Streaming Act*, which made a certain number of amendments to the *Broadcasting Act* when it came into force on 27 April 2023, any regulation made under paragraphs 10(1)(a) or 10(1)(i) of the old *Broadcasting Act* is deemed to be an order made under section 9.1 of the new *Broadcasting Act*.



report annually on how it has met this expectation, including the percentage of selections from Canadian emerging artists out of the total number of musical selections that were aired, and the number of distinct artists whose music has been aired. The licensee should also be able to provide, upon request, information such as a list of all titles, artists, and International Standard Recording Code (ISRC) numbers.

For the purposes of the above paragraph, the definition of “Canadian emerging artist” is the same as that set out in paragraph 346 of Broadcasting Regulatory Policy 2022-332.

#### **Indigenous musical selections**

Consistent with the Commission’s determination set out in *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022 (Broadcasting Regulatory Policy 2022-332), the Commission expects the licensee to include Indigenous musical selections on the station’s playlist. The licensee should report annually on the amount of Indigenous content aired on the station throughout the broadcast year (i.e., from 1 September to 31 August), including the percentage of Indigenous musical selections out of the total number of musical selections that were aired, and the number of distinct artists whose music has been aired. The licensee should also be able to provide, upon request, information such as a list of all titles, artists, and International Standard Recording Code (ISRC) numbers.

For the purposes of the above paragraph, the licensee may use the provisional definition of “Indigenous-Canadian musical selection” set out in paragraph 441 of Broadcasting Regulatory Policy 2022-332 to determine whether a musical selection can be considered an Indigenous musical selection.