



Broadcasting Decision CRTC 2023-253

PDF version

References: 2023-6, 2023-6-1, 2023-6-2 and 2023-6-3

Ottawa, 14 August 2023

CHMZ-FM Radio Ltd.
Tofino, British Columbia

Public record: 2022-0700-3

*Public hearing in the National Capital Region
3 May 2023*

CHMZ-FM Tofino – Licence renewal

Summary

The Commission **renews** the broadcasting licence for the English-language commercial radio station CHMZ-FM Tofino, British Columbia, from 1 September 2023 to 31 August 2026. This short-term renewal will allow for an earlier review of the licensee's compliance with its regulatory requirements.

Application

1. The Commission has the authority, pursuant to subsections 9(1), 9.1(1) and 11.1(2) 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*, and to make orders respecting expenditures.
2. On 10 June 2022, the Commission issued Broadcasting Notice of Consultation 2022-152,¹ 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, CHMZ-FM Radio Ltd. (CHMZ-FM Radio) filed an application to renew the broadcasting licence for the English-language commercial radio station CHMZ-FM Tofino, British Columbia, which expires 31 August 2023.² The Commission received ten interventions in support of this application.

¹ As corrected in Broadcasting Notice of Consultation 2022-152-1.

² The original licence expiry date for the station was 31 August 2022. The licence was administratively renewed until 31 August 2023 as a result of Broadcasting Decision 2021-297.

Background

4. In Broadcasting Decision 2020-76, the Commission found CHMZ-FM Radio to be in non-compliance with subsection 2.2(3) of the *Radio Regulations, 1986* (the Regulations) relating to the broadcast of Canadian musical selections, subsection 8(5) of the Regulations relating to the submission of clear and complete audio recordings, paragraph 9(3)(a) of the Regulations relating to the submission of accurate self-assessment reports, and paragraph 9(3)(b) of the Regulations relating to the submission of complete and accurate music lists.
5. The Commission also found the licensee to be in non-compliance with condition of licence 2 set out in Appendix 1 to Broadcasting Decision 2016-297, which required the broadcast of on-air announcements regarding CHMZ-FM's previous non-compliance.

Non-compliance

6. In Broadcasting Notice of Consultation 2023-6, the Commission noted that the licensee appeared to be in non-compliance with the following:
 - subsection 9(2) of the Regulations relating to the submission of complete annual returns for the 2019-2020 and 2020-2021 broadcast years; and
 - subsection 16(2) of the Regulations relating to the implementation of the National Public Alerting System (NPAS).
7. In that notice, the Commission also noted that the licensee may have also failed to comply with the requirement to pay tangible benefits as set out in Broadcasting Decision 2020-76.

Annual returns

8. 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.
9. Pursuant to this authority, the Commission made subsection 9(2) of the Regulations, which requires licensees to file an annual return, including financial statements, by no later than 30 November of a given year for the broadcast year ending the previous 31 August. The specific filing requirements, including the requirement to file financial statements, are set out in Broadcasting Information Bulletin 2011-795 and in Circular No. 404.
10. 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 9(2) 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.

11. According to Commission records, the licensee fully submitted the annual return for the 2019-2020 broadcast year almost two years late, in June 2022, and submitted a late and incomplete annual return for the 2020-2021 broadcast year, in August 2022.
12. In regard to the failure to submit these annual returns, CHMZ-FM Radio stated that the previous licensee had inadequate bookkeeping, which forced it to catch up with accounting and other obligations. This situation impacted its ability to file required documents, such as annual returns, on time.
13. In light of the above, the Commission finds the licensee in non-compliance with subsection 9(2) of the Regulations for the 2019-2020 and 2020-2021 broadcast years.

Implementation of a National Public Alerting System

14. Subsection 10(1) of the *Broadcasting Act* authorizes the Commission, in furtherance of its objects, to make regulations regarding, among other things, the broadcasting of programs. In Broadcasting Regulatory Policy 2014-444, the Commission stated that the broadcasting system has a vital role to play in the provision of emergency alert messages to Canadians and that the duty to inform the public of imminent perils is at the core of the public service obligations of all broadcasters. The provision of emergency alert messages is achieved through the NPAS.
15. Pursuant to the authority granted by subsection 10(1) of the *Broadcasting Act*, the Commission made section 16 of the Regulations. It specifies, among other things, that except as otherwise provided under a condition of its licence, a licensee of a commercial radio station shall implement, by no later than 31 March 2015, a public alerting system that broadcasts without delay any audio alert that it receives from the National Alert Aggregation and Dissemination (NAAD) System that
 - (a) announces an imminent or unfolding danger to life; and
 - (b) is designated by the applicable issuing authority for immediate broadcast in all or part of the area within the station's A.M. 5 mV/m contour, F.M. 0.5 mV/m contour or digital service area, as the case may be.
16. According to Commission records, the licensee did not implement the NPAS by the 31 March 2015 deadline.
17. The applicant stated that when it acquired the station in 2020, the previous licensee had not installed the NPAS equipment. CHMZ-FM Radio indicated that it fully implemented the system on 4 October 2022. However, the licensee has not submitted to the Commission proof that the system has been implemented.

18. In light of the above, the Commission finds the licensee in non-compliance with section 16 of the Regulations.

Payment of tangible benefits stemming from the acquisition of CHMZ-FM

19. In Broadcasting Regulatory Policy 2014-459, the Commission stated that since it does not solicit competing applications for changes to the ownership or effective control of broadcasting undertakings, the burden is on the applicant to show that the application is the best possible proposal and that approval is in the public interest, consistent with the overall objectives of the *Broadcasting Act*. The Commission further stated that as one way of ensuring that the public interest is served, it expects applicants to propose financial contributions (known as “tangible benefits”) that are proportionate to the size and nature of the transaction and will yield measurable improvements to the communities served by the broadcasting undertaking to be acquired, as well as the Canadian broadcasting system as a whole.

20. In Broadcasting Decision 2020-76, the Commission approved an application by CHMZ-FM Radio and CIMM-FM Radio Ltd. for the authority to change their ownership and effective control through the transfer of all their issued and outstanding shares to 1193833 B.C. Ltd. In that decision, the Commission determined that CHMZ-FM Radio and CIMM-FM Radio Ltd. would be required to pay clear and unequivocal contributions representing a minimum direct financial contribution of \$11,223 (representing 6% of \$187,055, the revised value of the transaction) to be spread equally over a seven-year period and to be allocated as follows:

- 3% of the value of the transaction (\$5,612) to the Radio Starmaker Fund or Fonds Radiostar;
- 1.5% of the value of the transaction (\$2,806) to FACTOR or Musicaction, at the discretion of the purchaser;
- 1% of the value of the transaction (\$1,870) to any eligible Canadian content development (CCD) initiative at the discretion of the purchaser; and
- 0.5% of the value of the transaction (\$935) to the Community Radio Fund of Canada.

21. According to Commission records, the licensee contributed \$0 in tangible benefits in the 2019-2020 to 2021-2022 broadcast years, representing an apparent shortfall of \$4,810 for both CHMZ-FM Radio and CIMM-FM Radio Ltd.

22. CHMZ-FM Radio stated that it was not fully aware of the requirements and procedures for tangible benefits, nor did it have the correct channels of communication opened with the appropriate parties.

23. The licensee further stated that the systems are now in place to ensure that regular tangible benefits payments are made and that as of November 2022, all tangible benefit payments were caught up.

24. In this regard, the Commission notes that the licensee has failed to submit the relevant forms and is therefore unable to confirm that the licensee has paid the tangible benefits for the 2019-2020 to 2021-2022 broadcast years. In light of the above, the Commission finds that the licensee has failed to make the required tangible benefit payments.

Regulatory measures

25. 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.

26. As set out in Broadcasting Regulatory Policy 2014-554, for stations that are in non-compliance, and depending on the nature of the non-compliance, the Commission may apply, on a case-by-case basis, measures such as renewing the licence for a short term; imposing additional conditions of licence (conditions of service); calling the licensee to a public hearing to respond to and discuss apparent non-compliance; issuing a mandatory order requiring the licensee to comply with regulatory requirements; or suspending, not renewing, or revoking the licence.

27. In regard to the licensee's non-compliance with subsection 9(2) of the Regulations, the Commission acknowledges this is the first instance of non-compliance with this regulation. However, given the seriousness of the non-compliance, the Commission finds that it would be appropriate to impose a condition of service regarding the submission of the missing portions of the annual return. Accordingly, and pursuant to subsection 9.1(1) of the *Broadcasting Act*, the Commission **orders** CHMZ-FM Radio, as a **condition of service**, to file the complete annual return for the 2020-2021 broadcast year by **30 November 2023**.

28. In regard to the licensee's non-compliance with section 16 of the Regulations, the Commission acknowledges that the licensee indicated it took measures to implement the NPAS in 2022. However, the licensee has not submitted proof that the system has been implemented. The Commission considers this non-compliance to be very severe in nature given that the licensee installed the NPAS more than seven years after the 31 March 2015 deadline for commercial radio stations to install the system. Accordingly, and pursuant to subsection 9.1(1) of the *Broadcasting Act*, the Commission **orders** CHMZ-FM Radio, as a **condition of service**, to install the NPAS by no later than **30 November 2023**, and to provide proof of implementation.

29. In regard to CHMZ-FM and the licensee's shortfall in its tangible benefit payments stemming from the acquisition of the station set out in Broadcasting Decision 2020-76, the licensee has failed to submit the relevant forms and the Commission is therefore unable to confirm that the licensee has paid the tangible benefits for the 2019-2020 to 2021-2022 broadcast years. Accordingly, and pursuant to subsection

11.1(2) of the *Broadcasting Act*, the Commission **orders** CHMZ-FM Radio, as a **condition of service**, to file proof of the payment of tangible benefits for the 2019-2020, 2020-2021 and 2021-2022 broadcasting years. Furthermore, the Commission **orders** CHMZ-FM Radio, as a **condition of service**, to pay tangible benefits for the 2022-2023 through 2025-2026 broadcast years and to file proof of payment.

30. Given that this renewal application was filed and processed prior to the coming into force of the new *Broadcasting Act*, and that interested parties had an opportunity to comment on the issue of compliance as part of that process, the Commission considers the Part 1 proceeding to fulfill the publication and consultation requirement for purposes of subsections 9.1(4) and 11.1(7) of the new *Broadcasting Act*. The specifics of these conditions of service are set out in the Appendix to this decision.
31. The Commission has examined the public record for this application and notes the licensee's willingness to ensure the station's compliance with regulatory requirements. However, given the seriousness of the various instances of non-compliance, along with the recurrence of the licensee's non-compliance with requirements relating to the filing of annual returns, the Commission finds that it would be appropriate to renew the broadcasting licence for CHMZ-FM for a short-term period, which will allow for an earlier review of the licensee's compliance with its regulatory requirements.

Conclusion

32. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CHMZ-FM Tofino, British Columbia, from 1 September 2023 to 31 August 2026.
33. Pursuant to subsections 49(1) and 50(2) 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*, or subsection 11.1(2) in the case of expenditure requirements. As such, the existing conditions of licence for this licensee became conditions of service and continue to apply to the licensee.
34. Pursuant to the authority set out in paragraphs 1 and 33, 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.

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. Should the licensee continue to be in non-compliance with regulatory requirements, the Commission may consider recourse to additional measures, including the issuance of a mandatory order, the revocation, non-renewal or suspension of the licence pursuant to sections 9 and 24 of the *Broadcasting Act*.

Importance of filing annual returns

37. Licensees are responsible for filing complete annual returns on time, including financial statements. As set out in Broadcasting Information Bulletin 2011-795, it is the licensee's responsibility to ensure that all appropriate forms and documentation are included with its annual returns, and to contact the Commission if further clarification is required.

National Public Alerting System

38. The full participation of the broadcasting industry is important for ensuring that the NPAS is effective in safeguarding and warning Canadians. Accordingly, the Commission considers that compliance must be enforced. Stations that are in non-compliance with the requirements relating to the NPAS will be closely monitored to ensure that they come into compliance within the prescribed timeframe. The Commission could choose to apply other regulatory measures, such as those set out in Broadcasting Information Bulletin 2014-608, should the requirements relating to the NPAS not be fulfilled.

CCD contributions and payment of tangible benefits

39. It is important that licensees make their required tangible benefits payments, given that CCD initiatives not only help to develop and advance the careers of emerging Canadian artists, but increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. The non-payment of tangible benefits payments therefore has the potential to cause harm to the Canadian broadcasting system.
40. It is incumbent upon licensees to provide, by the required deadlines, proof of payment to such initiatives. Licensees must also provide sufficient documentation to support the eligibility of their contributions. Failure to do so may result in the Commission finding a contribution ineligible, which in turn may affect a station's compliance with regulatory obligations.

Local news

41. 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.

42. 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

43. 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

44. 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

- *Notice of hearing – 5 April 2023*, Broadcasting Notice of Consultation CRTC 2023-6, 10 January 2023, as corrected by Broadcasting Notice of Consultation CRTC 2023-6-1, 27 January 2023, 2023-6-2, 10 February 2023 and 2023-6-3, 2 May 2023
- *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
- *CHMZ-FM Tofino and CIMM-FM Ucluelet – Change in ownership and effective control, and licence renewals*, Broadcasting Decision CRTC 2020-76, 28 February 2020

- *CIMM-FM Ucluelet and CHMZ-FM Tofino – Licence renewals*, Broadcasting Decision CRTC 2016-297, 29 July 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
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2023-253

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

Terms

The licence will expire 31 August 2026.

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*.³
3. In order to comply with the requirements set out in subsection 16(2) of the *Radio Regulations, 1986* and in *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014, the licensee shall implement the National Public Alerting System (NPAS) by no later than **30 November 2023**. As part of this requirement:
 - a. The licensee must file with the Commission a letter attesting to the implementation date of its NPAS within 14 days after the installation. In this letter, the licensee must confirm whether maintenance, testing and updating procedures have been adopted for its automated emergency alert message distribution equipment.
 - b. In addition, the licensee must file with the Commission the results of its first NPAS test, as scheduled by the relevant alerting authorities, within two weeks after the occurrence of such a system test.
4. The licensee shall file the complete annual returns for the 2020-2021 broadcast year, along with any missing annual return from the current licence term, by **30 November 2023**.

³ 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*.

5. To rectify the shortfall in tangible benefit payments incurred during the 2019-2020, 2020-2021 and 2021-2022 broadcast years, CHMZ-FM Radio Ltd. shall make contributions which, when combined with contributions made by CIMM-FM Radio Ltd., total \$4,810 and file proof of payment and eligibility for their contributions by 30 November 2023, in a form deemed acceptable by the Commission. These contributions shall follow the allocation set out in commitments set out in *CHMZ-FM Tofino and CIMM-FM Ucluelet – Change in ownership and effective control, and licence renewal*, Broadcasting Decision CRTC 2020-76, 28 February 2020.
6. To fulfill its tangible benefit commitments set out in *CHMZ-FM Tofino and CIMM-FM Ucluelet – Change in ownership and effective control, and licence renewal*, Broadcasting Decision CRTC 2020-76, 28 February 2020, CMHZ-FM Radio Ltd. shall make contributions which, when combined with contributions made by CIMM-FM Radio Ltd., total \$1,604 annually for the 2022-2023 through 2025-2026 broadcast years, for a total of \$6,413 over four consecutive broadcast years, to be allocated as follows:
 - \$802 to Radio Starmaker Fund or Fonds Radiostar;
 - \$401 to FACTOR or Musicaction;
 - \$267 to any eligible Canadian content development (CCD) initiative; and
 - \$134 to the Community Radio Fund of Canada.

Parties and initiatives that fulfill the criteria for eligible initiatives are set out in *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022. Examples of eligible and ineligible initiatives are provided on the Commission's [Canadian Content Development Contributions and Eligible Initiatives](#) webpage.

The licensee shall file proof of payment and eligibility regarding its Canadian content development contributions by 30 November of each year, and in a form deemed acceptable by the Commission.

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 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.

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 in its hiring practices and in all other aspects of its management of human resources.