



Broadcasting Decision CRTC 2011-456

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Route reference: 2010-912

Ottawa, 29 July 2011

MZ Media Inc.

Toronto and Cobourg, Ontario

Applications 2010-0250-1 and 2010-0251-8, received 2 February 2010

CFMZ-FM Toronto and CFMX-FM Cobourg – Licence renewals

*The Commission **renews** the broadcasting licences for the English-language specialty FM radio stations CFMZ-FM Toronto and CFMX-FM Cobourg from 1 September 2011 to 31 August 2015. These short-term licence renewals will allow for an earlier review of the licensee's compliance with the Radio Regulations, 1986 (the Regulations) and its conditions of licence.*

*The Commission **approves** the licensee's request to be relieved from subsection 15(4) of the Regulations relating to the requirement that 60% of Canadian content development contributions be devoted to FACTOR or MUSICACTION.*

Introduction

1. The Commission received applications by MZ Media Inc. (MZ Media) to renew the broadcasting licences for the English-language specialty radio programming undertakings CFMZ-FM Toronto and CFMX-FM Cobourg, which expire 31 August 2011.¹
2. In its renewal applications, MZ Media requested that it be relieved from subsection 15(4) of the Regulations, which requires it to devote 60% of its Canadian content development (CCD) contributions to FACTOR or MUSICACTION. The proposed amendment would permit MZ Media to devote up to 80% of its basic annual CCD contributions to initiatives related to the stations' classical music format and to direct the remainder to FACTOR.

¹ The broadcasting licences were administratively renewed from 1 April to 31 August 2011 in Broadcasting Decision 2011-197, from 1 December 2010 to 31 March 2011 in Broadcasting Decision 2010-880 and from 1 September to 30 November 2010 in Broadcasting Decision 2010-547.

3. In Broadcasting Notice of Consultation 2010-912, the Commission stated that the licensee may have failed to comply with subsection 9(2) of the *Radio Regulations, 1986* (the Regulations) relating to the filing of each station's annual returns for the 2007-2008 and 2008-2009 broadcast years. The Commission also stated that the licensee may have failed to comply with its condition of licence relating to Canadian talent development (CTD) contributions for the 2003-2004 broadcast year with respect to CFMZ-FM.

Interventions and applicant's reply

4. The Commission received several interventions in support of the applications, as well as an opposing intervention from the Canadian Independent Music Association (CIMA). The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
5. CIMA opposed MZ Media's request to be relieved from subsection 15(4) of the Regulations, stating that it did not find any reason that would warrant granting a change to MZ Media's contributions.
6. In response to CIMA's intervention, MZ Media stated that its proposed exception would simply allow it to continue to fund locally based art groups, in addition to directing 20% of its basic annual CCD contributions to FACTOR. MZ Media submitted that FACTOR's financial support for classical music has fallen short of reasonable expectations in recent years.

Non-compliance

Provision of annual returns

7. As set out in subsection 9(2) of the Regulations, on or before 30 November of each year, licensees are required to file their annual return for the broadcast year ending the previous 31 August. The Commission notes that each of the undertakings' annual returns for the 2007-2008 and 2008-2009 broadcast years were submitted after the 30 November deadline.
8. The licensee indicated that it provided its annual returns for the 2008-2009 broadcast year after the 30 November deadline because it was being audited in connection with a recent corporate reorganization.² With respect to the 2007-2008 broadcast year, the licensee indicated that it provided its annual returns after the 30 November deadline

² In Broadcasting Decision 2010-193, the Commission approved an application by MZ Media for authorization to effect a corporate reorganization through the transfer of all the issued and outstanding shares in the capital of MZ Media from Moses Znaimer to ZoomerMedia, a corporation controlled by Mr. Znaimer.

due to various circumstances, including integration issues pertaining to the acquisition of CHWO Toronto,³ as well as the hiring of a small accounting firm.

9. To ensure future compliance, the licensee stated that it was currently implementing administrative changes within the management of the company, such as appointing a chief financial officer to oversee the stations' annual filings.

Contributions to Canadian talent development

10. The Commission notes that there was a shortfall in CFMZ-FM's contribution to CTD for the 2003-2004 broadcast year since its annual contribution of \$20,000 was not paid in full by the end of that broadcast year (i.e. 31 August 2004).
11. The licensee stated that it should not be held responsible for this instance of non-compliance because it neither owned nor operated the station at the time of the infraction.⁴ However, it also indicated that it would meet the shortfall if required to do so.
12. In light of the above, the Commission directs the licensee to fulfill the \$850 shortfall and file the appropriate proofs of payment by no later than 31 September 2011.

Conclusion

13. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to dealing with radio stations found out of compliance. Specifically, when a licensee files an application for a licence renewal or a licence amendment, the Commission evaluates each instance of non-compliance in its context and according to factors such as the quantity, the recurrence and the seriousness of the non-compliance, as well as the circumstances leading to the non-compliance, the arguments provided by the licensee and the measures taken to rectify the situation.
14. In light of all of the above, the Commission considers that a short-term renewal for CFMZ-FM and CFMX-FM is appropriate. Accordingly, the Commission **renews** the broadcasting licences for the English-language specialty FM radio programming undertakings CFMZ-FM Toronto and CFMX-FM Cobourg from 1 September 2011 to 31 August 2015. These short-term licence renewals will allow for an earlier review of the licensee's compliance with the Regulations and its conditions of licence. The licences will be subject to the terms and **conditions of licence** set out in the appendices to this decision.

³ In Broadcasting Decision 2008-73, the Commission approved an application by MZ Media to acquire from Primetime Radio Inc. the assets of the English-language radio programming undertaking CHWO Toronto and for a broadcasting licence to continue the operation of the undertaking.

⁴ The ownership transaction relating to CFMZ-FM is set out in Broadcasting Decision 2006-458.

15. In regard to the licensee's request to be relieved from subsection 15(4) of the Regulations relating to the requirement to devote 60% of its CCD contributions to FACTOR or MUSICATION, while the Commission notes the licensee's non-compliances as discussed above, it finds it appropriate to grant the proposed exception in this case since CFMZ-FM and CFMX-FM are the only English-language commercial radio stations in Canada with a classical music format. This CCD flexibility will allow the licensee to support artists and eligible initiatives associated with its stations' classical music format.
16. Further, the Commission reminds MZ Media that it is required to adhere to the requirements relating to contributions to CCD set out in section 15 of the Regulations, as amended from time to time. Parties and initiatives eligible for CCD funding are identified in paragraph 108 of Broadcasting Public Notice 2006-158.

Tangible benefits flowing from the 2006 ownership transaction

17. In Broadcasting Decision 2006-458, the Commission approved the application by MZ Media to acquire from Trumar Communications Inc. the assets of the English-language specialty radio programming undertaking CFMX-FM-1 Toronto and its transmitter CFMX-FM Cobourg and the English-language transitional digital radio undertaking CFMX-DR-1 Toronto. In that decision, MZ Media was directed to pay clear and unequivocal benefits contributions representing a minimum direct financial contribution to CTD of \$720,000 or 6% of the value of the transaction. The Commission expects MZ Media to honour its commitment to distribute the tangible benefits flowing from the 2006 ownership transaction as set out in Broadcasting Decision 2006-458.

Secretary General

Related documents

- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Administrative renewals*, Broadcasting Decision CRTC 2011-197, 18 March 2011
- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2010-912, 6 December 2010
- *Administrative renewals*, Broadcasting Decision CRTC 2010-880, 26 November 2010
- *Administrative renewals*, Broadcasting Decision CRTC 2010-547, 3 August 2010
- *Vision TV – Acquisition of assets; CHNU-TV Fraser Valley and CIII-TV Winnipeg – Change in effective control; One: The Body, Mind and Spirit Channel – Change in effective control; Classical Digital, CFZM, CFMZ-FM, CFMZ-DR-1 Toronto, and CFMX-FM Cobourg – Corporate reorganization*, Broadcasting Decision CRTC 2010-193, 30 March 2010

- *CHWO Toronto – Acquisition of assets*, Broadcasting Decision CRTC 2008-73, 31 March 2008
- *CFMX-FM-1 Toronto, CFMX-FM Cobourg and CFMX-DR-1 Toronto – Acquisition of assets*, Broadcasting Decision CRTC 2006-458, 31 August 2006
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC [2006-158](#), 15 December 2006

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

Appendix 1 to Broadcasting Decision CRTC 2011-456

Terms, conditions of licence and expectations for the English-language specialty radio programming undertaking CFMZ-FM Toronto

Terms

The licence will expire 31 August 2015.

Conditions of licence

1. The licence shall be subject 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.
2. The station shall be operated within the specialty format as defined in *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000 and *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995, as amended from time to time.
3. As an exception to the percentage of basic annual Canadian content development (CCD) contributions required to be devoted to FACTOR or MUSICACTION set out in subsection 15(4) of the *Radio Regulations, 1986*, the licensee shall devote 20% of its basic annual CCD contribution to FACTOR and shall devote the remainder to eligible initiatives related to the station's classical music format. Parties and initiatives fulfilling the definition of eligible initiatives are set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC [2006-158](#), 15 December 2006.
4. In each broadcast week, the licensee shall devote a minimum of 70% of all musical selections broadcast to musical selections drawn from content subcategory 31 (Concert).
5. As an exception to the percentage of Canadian musical selections set out in section 2.2(3) of the *Radio Regulations, 1986* (the Regulations), the licensee shall devote in each broadcast week at least 18% of all musical selections drawn from content category 3 (Special Interest Music) to Canadian selections and schedule those selections in a reasonable manner throughout each broadcast day. This percentage (18%) will increase by 1% each broadcast year so that the level of Canadian musical selections drawn from content category 3 reaches 20% by the beginning of the 2013-2014 broadcast year and remains as such for the balance of the licence term.

For the purposes of this condition, the terms "broadcast week," "Canadian selection," "content category" and "musical selection" shall have the same meanings as those set out in the Regulations.

6. The licensee is authorized to use Subsidiary Communications Multiplex Operations (SCMO) channels to distribute a commercial Tamil-language service and a commercial Persian-language service produced by Radio Sedaye Iran.

With respect to condition 6, the licensee is expected to adhere to the guidelines set out in Appendix A to *Services Using the Vertical Blanking Interval (Television) or Subsidiary Communications Multiplex Operation (FM)*, Public Notice CRTC 1989-23, 23 March 1989.

Encouragement

Employment equity

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 2011-456

Terms, conditions of licence and encouragement for the English-language specialty radio programming undertaking CFMX-FM Cobourg

Terms

The licence will expire 31 August 2015.

Conditions of licence

1. The licence shall be subject 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.
2. The station shall be operated within the specialty format as defined in *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000 and *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995, as amended from time to time.
3. As an exception to the percentage of basic annual Canadian content development (CCD) contributions required to be devoted to FACTOR or MUSICACTION set out in subsection 15(4) of the *Radio Regulations, 1986*, the licensee shall devote 20% of its basic annual CCD contribution to FACTOR and shall devote the remainder to eligible initiatives related to the station's classical music format. Parties and initiatives fulfilling the definition of eligible initiatives are set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC [2006-158](#), 15 December 2006.
4. In each broadcast week, the licensee shall devote a minimum of 70% of all musical selections broadcast to musical selections drawn from subcategory 31 (Concert).
5. As an exception to the percentage of Canadian musical selections set out in section 2.2(3) of the *Radio Regulations, 1986* (the Regulations), the licensee shall devote in each broadcast week at least 17% of all musical selections drawn from content category 3 (Special Interest Music) to Canadian selections and schedule those selections in a reasonable manner throughout each broadcast day. This percentage (17%) will increase by 1% each broadcast year so that the level of Canadian musical selections drawn from content category 3 reaches 20% by the beginning of the 2014-2015 broadcast year and remains as such for the balance of the licence term.

For the purposes of this condition, the terms "broadcast week," "Canadian selection," "content category" and "musical selection" shall have the same meanings as those set out in the Regulations.

6. In each broadcast week, the licensee shall limit the amount of differentiated spoken word content broadcast to a maximum of 4 hours and 12 minutes. For the purposes of this condition, differentiated spoken word content is defined as station identifications,

promotional announcements and first appearance surveillance material, such as arts billboards, community messages, public service announcements and regional information, that shall not be broadcast on CFMZ-FM Toronto during the same broadcast week.

Encouragement

Employment equity

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.