



## Broadcasting Decision CRTC 2012-476

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Ottawa, 5 September 2012

### Radio Charlesbourg/Haute St-Charles

Charlesbourg, Quebec

*Application 2011-1557-7, received 1 December 2011*

*Public hearing in the National Capital Region*

*19 June 2012*

### CIMI-FM Charlesbourg – Non-renewal of licence

*The Commission **denies** the application by Radio Charlesbourg/Haute St-Charles (Radio Charlesbourg) to renew the broadcasting licence for French-language community radio station CIMI-FM Charlesbourg. Given the seriousness and recurrence of current and past non-compliance, Radio Charlesbourg's inability to implement the measures necessary for the station's recovery during the past few years, its own doubts about the possibility of receiving enough support from the community to re-launch the station, and the inadequate plans for the next licence term, the Commission concludes that non-renewal of the licence is the only possible measure to take under the circumstances.*

#### Introduction

1. The Commission received an application by Radio Charlesbourg/Haute St-Charles (Radio Charlesbourg) to renew the broadcasting licence for French-language community radio programming undertaking CIMI-FM Charlesbourg. The licence expires on 30 November 2012.<sup>1</sup> The Commission did not receive any interventions in connection with this application.

#### Background

2. The Commission approved Radio Charlesbourg's initial application for a broadcasting licence to operate CIMI-FM in Broadcasting Decision 2001-164. The station began broadcasting on 27 November 2001. In Broadcasting Decision 2007-326, the Commission granted the station a four-year short-term licence renewal until 31 August 2011, based on its failure to comply with sections 8(5), 8(6) and 9(3)

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<sup>1</sup>The Commission administratively renewed CIMI-FM's broadcasting licence until 31 August 2012 in Broadcasting Decision 2011-555, as amended by Broadcasting Decision CRTC 2011-555-1 and until 30 November 2012 in Broadcasting Decision CRTC 2012-341.

of the *Radio Regulations, 1986* (the Regulations). In that decision, in light of the significant changes made to CIMI-FM's board of directors, the Commission directed the licensee to file, by 31 December 2007, a report setting out the composition of the station's board of directors, as well as the term of each board member.

3. In a letter dated 14 November 2007, Commission staff asked the licensee for updated information with respect to its board of directors. The licensee did not respond to that letter.
4. Subsequently, the Commission received a number of complaints from listeners, informing it that CIMI-FM had ceased broadcasting.
5. In a letter dated 19 June 2009, Commission staff requested that the licensee inform it concerning why it had ceased broadcasting and to provide it with its intentions regarding future operations. On 13 July 2009, the licensee informed Commission staff by email that the station was forced to close following legal and financial conflicts, but that a recovery plan would allow the station to resume broadcasting in September 2009.
6. On 28 January 2010, Commission staff sent another letter to the licensee seeking an update on its status. On 2 February 2010, the licensee replied by email that the recovery plan had failed and that the station had not been on the air since its closure in 2008. Commission staff attempted to contact the licensee again by email on 17 February 2010 but received no response. Between February 2010 and 1 December 2011, the Commission had no contact persons for CIMI-FM. However, on 1 December 2011, the Commission received an application to renew CIMI-FM's licence.

**Commission's concerns as set out in Broadcasting Notice of Consultation 2012-224**

7. After reviewing the public record for this application in light of the applicable regulations and policies, the Commission considers that the issues to be addressed are the following:
  - apparent non-compliance with section 9(2) of the Regulations, given that the licensee did not file any annual returns during its entire licence term;
  - apparent non-compliance with section 9(4) of the Regulations, given that the licensee did not reply to Commission staff's correspondence of 14 November 2007 and 17 February 2010, and did not file the report regarding the composition of the board of directors and the term and mandate of each of its members required in Broadcasting Decision 2007-326;
  - the licensee's failure to achieve the objectives of the Community Radio Policy (Public Notice 2000-13), given that the licensee did not fulfill the mandate of a community radio station set out in that public notice;

- the licensee's plans for meeting the objectives of the new community radio policy set out in Broadcasting Regulatory Policy 2010-499, should the station resume broadcasting.
8. In that notice, the Commission noted that it expected to inquire into these issues at the public hearing and that it intended to review the licensee's plans for the re-launch of its station and future compliance with its conditions of licence and the Regulations. The Commission also indicated that it intended to review the station's governance and how the licensee planned to fulfill the role and mandate of a community radio station set out in Broadcasting Regulatory Policy 2010-499.
  9. In light of the instances of apparent non-compliance, the Commission indicated in the notice that it expected the licensee to demonstrate at the hearing the reasons why: its licence should be renewed; a mandatory order should not be issued requiring the licensee to comply with the Regulations and Regulatory Policy 2010-499 pursuant to section 12 of the *Broadcasting Act* (the Act); and its licence should not be suspended or revoked pursuant to sections 9 and 24 of the Act, or be renewed for a short term.

## **Non-compliances**

### **Requests for information – annual returns**

10. Section 9(2) of the Regulations states:

On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous August 31.

11. The licensee was advised (by email at the address on the Commission's file) that the Commission had not received annual returns for the 2009–2010 and 2010–2011 broadcast years. The licensee did not reply to the Commission. In addition, in a letter from staff dated 23 March 2012, the Commission notified the licensee that it had not received annual returns for CIMI-FM for the broadcast years from 2007-2008 to 2010-2011 inclusive. In response to that letter, the licensee stated that no financial statements had been produced because the station had not been in operation for approximately two years. The licensee added that once the station returns to operation, the accounting will be handled by a new treasurer, supported by an external firm. The licensee also committed to submit annual reports for the station within the prescribed time frames.
12. At the hearing, the licensee stated that one of the members of its new board of directors is both vice-chair and treasurer. Furthermore, the licensee indicated that it had engaged a mentor – the operator of another community radio station – to guide it through the preparation and submission of the station's future annual returns.

### ***Commission's analysis and decisions***

13. The Commission notes that the station's licence term was four years and that the station was on the air at the beginning of its licence term. The Commission emphasizes that the licensee is responsible for ensuring that it fulfills its regulatory obligations at all times and for notifying the Commission of any change related to the station's operations that could affect its capacity to fulfill those obligations such as, in the present case, the station's closure.
14. Further, the requirement to file annual returns is clearly set out in the Regulations, which specify just as clearly the manner in which they must be completed and the date by which they must be filed. Although the licensee claims to have understood its regulatory obligations and stated that it intended to fulfill them in the future, the Commission is not convinced that the licensee has set out concrete plans to ensure the correction of a type of non-compliance that has been ongoing since 2007. While it did consult a mentor, the licensee was not able to set out a specific plan regarding the measures that will be taken internally with respect to management, monitoring and all the other responsibilities of a licensee to ensure that the situation does not recur in the future. The Commission therefore concludes that the licensee has failed to comply with section 9(2) of the Regulations and that the licensee has not presented a concrete plan to ensure that it will comply in the future.

### **Requests for information – replies to the Commission's requests for information and filing of the report required in Broadcasting Decision 2007-326**

15. Section 9(4) of the Regulations stipulates that, at the request of the Commission, the licensee shall respond to any request for information regarding the licensee's programming, ownership or any other question regarding its undertaking that is within the Commission's authority.
16. In a letter dated 27 March 2012, the Commission reminded the licensee that it had not replied to certain letters, namely one dated 14 November 2007 and another dated 17 February 2010, and that the licensee had not filed the report required in Broadcasting Decision 2007-326. The Commission asked the licensee to justify why it had not responded to those letters or filed the required report.
17. In its reply, the licensee indicated that the Commission had not sent its correspondence to the correct address. The licensee indicated that a new address would be provided to the Commission and that such an error would not recur. The licensee did not comment on its failure to file the required report.
18. At the hearing, the licensee confirmed that its contact information is that listed on the Quebec Enterprise Registrar. The licensee admitted that it was not familiar with the Commission's systems for contacting it to update contact information.

### ***Commission's analysis and decisions***

19. The Commission notes that the information that it used to contact the licensee was valid at the time of the last licence renewal in 2007. The Commission also notes that other letters were sent to that email address since the licence renewal, including those dated 19 June 2009 and 28 January 2010, respectively, to which the licensee replied.
20. The Commission is charged with the regulation and supervision of the Canadian broadcasting system. As such, it must at all times be in a position to contact licensees of broadcasting undertakings in order to adequately perform its duties. Therefore, the inability or unwillingness to respond to the Commission is cause for serious concern. Although the licensee indicated that it understood its obligations in that respect and that it intended to fulfill them in the future, the Commission is not satisfied that the plans described by the licensee at the hearing are sufficient for the Commission to conclude that the measures that will be taken (such as appointing a person responsible for regulatory affairs, etc.) are enough to ensure that the situation will not recur in the future. Consequently, the Commission finds that Radio Charlesbourg contravened section 9(4) of the Regulations and that the licensee did not present a concrete plan to ensure its compliance in the future.

### **The community radio policy established in Public Notice 2000-13**

21. The Commission granted and renewed CIMI-FM's licence based on the policy set out in Public Notice 2000-13. During the licence term, the licensee was to operate the station in a manner that fulfilled all of the objectives set out in that policy. Public Notice 2000-13 stipulates that a community radio station is owned and controlled by a not-for-profit organization, the structure of which provides for membership, management, operation and programming primarily by members of the community.
22. According to Public Notice 2000-13, "The programming broadcast by individual community stations should be varied and provide a wide diversity of music and spoken word." Furthermore, "[c]ommunity stations should thus adapt their musical programming to reflect the changing needs and interests of their own listeners, who are generally seeking less commercial and less middle-of-the-road music." Moreover, the Commission expects stations to engage in projects to promote and present music by new Canadian artists, local artists and artists whose music is seldom heard on other stations. Finally, all community radio licensees are expected to facilitate community access to their programming, promote the availability of training throughout the community, and provide for the ongoing training and supervision of those within the community who wish to participate in programming.
23. The Commission notes that the station has not been on the air since December 2008, that is, for a major part of its licence term, and that the licensee never formally notified the Commission of its closure. At the hearing, the licensee indicated that the station had to cease operations due to bankruptcy in 2008 following three years of operating deficits and problems with the station's administrators. The licensee added

that the station's debts were such that it had had to apply to a bankruptcy trustee and that consequently the station had not been able to broadcast and fulfill its mandate.

***Commission's analysis and decisions***

24. Since the licensee did not update the composition of its board of directors as required in Decision 2007-326, the Commission considers that it would be difficult to determine whether the licensee is fulfilling the objective of the policy regarding the control, structure and participation of its members.
25. At the hearing, the licensee stated that the station's board of directors was dissolved when the station closed in 2008. Furthermore, since it had ceased to broadcast, the station could not offer the programming described in the community radio policy to the community of Charlesbourg and, consequently, the licensee did not meet that objective of Public Notice 2000-13. Moreover, the station was not able to promote artists and their work in the community of Charlesbourg and, consequently, the licensee did not meet that requirement of Public Notice 2000-13, either. The Commission notes that, after the station's bankruptcy, the dissolution of its board of directors and the seizure of its equipment, there was nothing left of the infrastructure to allow volunteers to participate in the day-to-day life and management of the station, which means that the licensee also did not fulfill that objective of its mandate.
26. The Commission further notes that, even before its closure, the station appeared to have difficulty attracting and maintaining the participation of volunteers. The Commission noted this situation in Broadcasting Decision 2007-326. Indeed, without offices or studios, the station could hardly facilitate community access and promote opportunities for training.
27. The Commission notes that during most of its licence term, the licensee did not satisfy the requirements with respect to the station's governance, programming, the promotion of local talent and the participation of volunteers.
28. Based on these facts, the Commission concludes that the licensee contravened one of the fundamental conditions of CIMI-FM's licence, that is, the obligation to operate the station as a community radio station.

**Future plans and their consistency with Broadcasting Regulatory Policy 2010-499**

29. Although the station had ceased to broadcast, the licensee had the opportunity to submit a licence renewal application. That licence renewal application was to include detailed plans clearly demonstrating how the licensee intended to meet all the objectives of the current community radio policy set out in Broadcasting Regulatory Policy 2010-499.
30. Broadcasting Regulatory Policy 2010-499 stipulates that a campus or community radio station is owned, operated, managed and controlled by a not-for-profit organization that provides for membership, management, operation and programming primarily by members of the community served. According to that policy, spoken

word programming must respond to the specific needs and interests of the communities served. The Commission therefore expects licensees to describe the news, public affairs and other programs that are of strictly local interest and to indicate how many of them are produced by volunteers. In addition, the Commission expects community and campus stations to promote the development of Canadian talent by providing air time to emerging artists and other talent. The policy stipulates that community radio should facilitate community access to its programming, promote training within the community, and provide for the training and supervision of those within the community who wish to participate in programming.

31. The Commission notes that, at the time of filing the renewal application, the licensee had not constituted a proper board of directors. At the hearing, the licensee stated that a board of directors had been elected at a general meeting held on 17 June 2012, only two days before the public hearing. The licensee added that a chair, vice-chair and treasurer had been appointed, but no that other titles had been given to the other elected members. The Commission also notes that despite, their business experience, the other members elected lack experience in broadcasting.
32. With respect to programming, the licensee indicated that the station would broadcast and produce 30 hours of programming per broadcast week. Out of those 30 hours, at least two hours would be of ethnic programming intended for the African and South-American communities. The licensee did not intend to broadcast any acquired programs. As for the promotion of new talent, the licensee indicated that it would give priority to unknown Canadian music and bands, as well as to unknown immigrant artists.
33. Regarding the participation of volunteers, the licensee stated that anyone with a viable project would be entitled to a trial period and that there would be “[translation] public education sessions with on-air question periods.” The licensee is committed to “[translation] coaching” and “collaborating with professional educational institutions.” At the hearing, the licensee stated that it had not yet surveyed the community, local businesses and educational institutions concerning their interest in participating in the station’s programming and operations, but that it would do so without delay.
34. The licensee also stated that it would not be able to put the station on air before its licence expires on 31 August 2012 and that it would like to have an additional period of six months to a year to do so. The licensee added that it had not yet developed the station’s recovery plan and that it was even possible that it would abandon the project entirely if the community did not seem prepared to become involved in saving the station.
35. In response to the Commission’s questions as to why efforts were not made sooner, the licensee stated that it did not have access to the station, which had been turned over to the bankruptcy trustee, and that the members of its board of directors, who had not parted on good terms at the time of the station’s bankruptcy, had to reconcile.

36. In response to the Commission's questions as to why the station's licence should be renewed, the licensee stated that it hoped to see the station reborn and reclaim its place in the community.

### ***Commission's analysis and decisions***

37. Regarding the station's future programming, the Commission notes that the licensee described only briefly the types of programs that would make up the 30 hours of programming that it intended to broadcast and did not explain in detail how those programs would reflect the community. Furthermore, it did not specify how many of those programs would be produced by volunteers. In addition, the licensee did not submit a music list or program schedule identifying the place that would be given to new talent in the station's programming. The Commission notes that the licensee also did not indicate whether it would attend or promote events showcasing local artists. In short, the licensee recognized that it had not developed detailed plans for its programming, and this is of great concern to the Commission.

38. Moreover, the licensee did not specify how the station would recruit, train and supervise volunteers, nor the number and nature of volunteer positions to be filled. The licensee did not name the educational establishments with which it intended to establish partnerships, nor did it indicate whether or not any agreements have been concluded between the station and those establishments to date. The licensee recognized that it had not established any contacts in the community, and this is of great concern to the Commission.

39. Although the licensee recovered the station's technical equipment and regained access to its offices, the Commission notes, as indicated by the licensee at the hearing, that that equipment is not in working condition and restoring it to working condition would add time and expenditures to the station's re-launch. The Commission notes that even if the licensee had access to those funds, the licensee did not establish a budget for the station's re-launch and operation.

40. In light of the above, the Commission finds that the licensee's plans are not developed sufficiently to convince the Commission that the licensee would fulfill the objectives of the community radio policy if its license were renewed.

### **Regulatory measures**

41. The Commission notes that licences are not renewed automatically. In addition to reporting on compliance with regulatory requirements during their last licence term, licensees of operating stations must also provide proof of their ability to fulfill those obligations in the future, as they are responsible for broadcasting in a manner that fulfills the fundamental conditions of their licence and their regulatory requirements.

42. The Commission considers that the issues of non-compliance described above, taken together, are extremely serious. In this context, the filing of annual returns and responses to the Commission's requests are essential tools without which the

Commission cannot supervise the station. They are also important indicators of whether the licensee has the stability and knowledge necessary to bring itself into, and maintain compliance.

43. The Commission notes that the efforts made by the licensee for the hearing were made at the last minute, and is deeply dissatisfied with the licensee's future plans. The Commission also notes that the public did not express support for the station during the intervention period for this proceeding. Under these circumstances, the Commission is not convinced that the licensee has the capacity to remedy its current situation and, more generally, to operate a station as a responsible licensee and comply with its regulatory obligations and conditions of licence.
44. The Commission has considered all regulatory measures available to it to ensure that licensees fulfill their obligations, including the imposition of conditions of licence, the issuance of a mandatory order, and the short-term renewal, suspension, revocation and non-renewal of CIMI-FM's broadcasting licence. Given the seriousness and recurrence of current and past non-compliance, Radio Charlesbourg's inability to implement the measures necessary for the station's recovery in the past few years, its own doubts about the possibility of receiving enough support from the community to re-launch the station, and the inadequate plans for the next licence term, the Commission is not convinced that imposing conditions of licence, issuing mandatory orders, granting a short-term renewal or suspending the licence would be effective measures. Consequently, the Commission concludes that non-renewal of the licence is the only possible measure to take under the circumstances.
45. In light of all of the above, the Commission **denies** the application by Radio Charlesbourg/Haute St-Charles to renew the broadcasting licence for French-language community radio programming undertaking CIMI-FM Charlesbourg. Accordingly, the licence will expire on 30 November 2012.

Secretary General

#### **Related documents**

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2012-224, 18 April 2012, as amended by *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2012-224-1, 11 May 2012
- *Administrative renewals*, Broadcasting Decision CRTC 2012-341, 22 June 2012
- *Administrative renewals*, Broadcasting Decision CRTC 2011-555, 31 August 2011, as amended by *Administrative renewals – Corrections*, Broadcasting Decision CRTC 2011-555-1, 23 September 2011
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010

- *CIMI-FM Charlesbourg – Licence renewal*, Broadcasting Decision CRTC 2007-326, 23 August 2007
- *New community radio station*, Broadcasting Decision CRTC 2001-164, 5 March 2001
- *Campus Radio Policy*, Public Notice CRTC 2000-13, 28 January 2000