



Broadcasting Decision CRTC 2012-685

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Route reference: 2012-461

Ottawa, 17 December 2012

Rogers Broadcasting Limited
Ottawa and Smiths Falls, Ontario

Applications 2011-0183-1 and 2011-0205-3, received 1 February 2011

CHEZ-FM Ottawa and CKBY-FM Smiths Falls – Licence renewals

*The Commission **renews** the broadcasting licences for the English-language commercial radio stations CHEZ-FM Ottawa and CKBY-FM Smiths Falls until 31 August 2019.*

Introduction

1. The Commission received applications by Rogers Broadcasting Limited (Rogers) to renew the broadcasting licences for the English-language commercial radio programming undertakings CHEZ-FM Ottawa and CKBY-FM Smiths Falls. The Commission received interventions in support of these applications.
2. In Broadcasting Notice of Consultation 2012-461, the Commission stated that the licensee may have failed to comply with section 15(2) of the *Radio Regulations, 1986* (the Regulations) relating to contributions to Canadian content development (CCD) for the 2010-2011 broadcast year.
3. Upon further review of the record, the apparent non-compliance relates to the 2008-2009 and 2009-2010 broadcast years rather than the 2010-2011 broadcast year. Specifically, the licensee may have failed to comply with section 15(2) of the Regulations relating to contributions to CCD for the 2008-2009 and 2009-2010 broadcast years for CHEZ-FM and for the 2009-2010 broadcast year for CKBY-FM.

Commission's analysis and decisions

4. After examining the applications in light of applicable regulations and policies, the Commission considers that the issue to be addressed in its determinations relates to the licensee's apparent non-compliance related to CCD contributions.
5. Rogers made a contribution on behalf of CHEZ-FM totalling \$18,754 in the 2008-2009 broadcast year and \$6,835 in the 2009-2010 broadcast year, as well as a contribution of \$909 on behalf of CKBY-FM in the 2009-2010 broadcast year

to the KISS FM Concert Series, an event that took place on 24 November 2010 and featured a number of Canadian artists.

6. In letters dated 22 September 2011 and 27 March 2012, the Commission requested that Rogers provide more information concerning how its contributions to the event were allocated, and how the event qualified as an eligible CCD initiative as set out in Broadcasting Public Notice 2006-158. The letters further noted that, in the event that Rogers could not justify the event's eligibility, the Commission could deem it ineligible, which would constitute non-compliance with section 15(2) of the Regulations. As a result, Rogers' expenses related to that event would be excluded from its CCD contributions, which would result in a shortfall.
7. In a letter dated 30 September 2011, Rogers stated that it had made a contribution to FACTOR of \$909 on behalf of CKBY-FM – the same amount as that station's contribution toward the concert series – to cover any potential shortfall related to a contribution to the KISS Concert Series. Despite this contribution to FACTOR, Rogers maintained that the initiative should be considered as an eligible CCD contribution. In support of this position, Rogers submitted that:
 - the initiative involved a third party;
 - the initiative was not self serving, given that the entire purpose of the event was to promote and showcase new local Canadian musical talent; and
 - all funds directed to this event were incremental and well outside any regular marketing or promotion budgets for stations in a market like Smiths Falls.
8. In letters dated 3 April 2012 and 11 April 2012, Rogers added that tickets to the event were simultaneously distributed to station listeners as well as the general public, with the majority of the tickets distributed through the venue to the general public, and that out of the 461 fans in attendance at the KISS Concert Series, only 90 were KISS Club listeners. Rogers provided a letter from the City of Ottawa stating that it had assisted in the distribution of tickets. Rogers submitted that since it made its required CCD contributions to initiatives that it believes to be eligible, both CHEZ-FM and CKBY-FM should be found in full compliance with the Regulations.
9. The Commission has consistently considered that events that are open exclusively to station listeners are station promotions, and therefore part of the normal cost of doing business. In this instance, Rogers has filed compelling evidence to demonstrate that the event in question was not principally self-promotional in nature. Accordingly, the Commission finds that Rogers has met the requirements of its licences as they relate to CCD contributions.
10. As a result, the Commission finds CHEZ-FM in compliance with section 15(2) of the Regulations, as it relates to CCD contributions for the 2008-2009 broadcast year, and both CHEZ-FM and CKBY-FM in compliance with section 15(2) of the Regulations, as it relates to CCD contributions for the 2009-2010 broadcast year.

Conclusion

11. In light of the above, the Commission **renews** the broadcasting licences for the English-language commercial radio programming undertakings CHEZ-FM Ottawa and CKBY-FM Smiths Falls until 31 August 2019. The licences for CHEZ-FM and CKBY-FM will be subject to the terms and **conditions of licence** set out in the appendix to this decision.

Employment equity

12. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2012-461, 28 August 2012
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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

Appendix to Broadcasting Decision CRTC 2012-685

Terms and conditions of licence for the commercial radio programming undertakings CHEZ-FM Ottawa and CKBY-FM Smiths Falls, Ontario

Terms

The licences will expire 31 August 2019.

Conditions of licence

1. The licences shall be subject to the *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.