



Broadcasting Decision CRTC 2014-667

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Route reference: 2014-474

Ottawa, 19 December 2014

2188301 Ontario Corporation
Alliston, Ontario

Application 2013-1640-7, received 17 November 2013

CFAO-FM Alliston – Licence renewal

*The Commission **denies** the application to renew the broadcasting licence for the English-language low-power commercial radio station CFAO-FM Alliston, Ontario.*

CFAO-FM has been off the air for most of the past licence term and has not resumed operations despite the deadline of 31 October 2014 set out in Broadcasting Notice of Consultation 2014-474 (the Notice). As a result, CFAO-FM is making no contribution to the implementation of the goals set out in the Broadcasting Act nor is it providing any service to residents of the community that it is licensed to serve.

The licensee is also in non-compliance with the Radio Regulations, 1986 (the Regulations) regarding submission of CFAO-FM's annual returns. The licensee has not submitted any returns for the licence term despite the deadline of 1 October 2014 set out in the Notice.

The licensee is further in non-compliance with the Regulations regarding the provision of information to the Commission needed to assess its compliance with the Direction to the CRTC (Ineligibility of non-Canadians), as well as with provisions of the Regulations and its conditions of licence with respect to Canadian content development contributions for CFAO-FM.

Background

1. The Commission received an application by 2188301 Ontario Corporation to renew the broadcasting licence for the English-language low-power commercial radio station CFAO-FM Alliston, Ontario, which expires 31 December 2014.¹
2. CFAO-FM was licensed in Broadcasting Decision 2008-147 and went on the air in 2009. In November 2013, the licensee submitted an application to renew CFAO-FM's broadcasting licence.

¹ In Broadcasting Decision 2014-359, the Commission administratively renewed the broadcasting licence for CFAO-FM Alliston from 1 September 2014 to 31 December 2014.

3. Broadcasting Notice of Consultation 2014-474 (the Notice), which called for comment on the renewal of CFAO-FM's licence, noted that CFAO-FM appeared to have been off-air for the majority of its licence term. During that time, the Commission received numerous complaints from the public on the status of the station as well as inquiries about why no programming was broadcast on frequency 94.7 MHz in Alliston, the frequency assigned to CFAO-FM.
4. The Commission further noted that the licensee may have failed to comply with:
 - section 9(2) of the *Radio Regulations, 1986* (the Regulations) relating to the provision of annual returns for the 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 broadcast years;
 - section 15(2) of the Regulations relating to the basic Canadian content development (CCD) contributions for the 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 broadcast years;
 - its condition of licence 2 relating to additional CCD contributions set out in Broadcasting Decision 2008-147 for the 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 broadcast years;
 - section 9(4) of the Regulations with respect to the obligation to provide all information relevant to the Commission's request; and
 - the obligation to be a Canadian licensee pursuant to the *Direction to the CRTC (Ineligibility of non-Canadians)*.
5. In the Notice, the Commission stated that being off-air is a very serious matter because it does not represent the best use of a scarce public radio frequency and does not contribute to the fulfillment of the objectives of the *Broadcasting Act*. In light of the above, the Commission indicated that it could decide not to renew CFAO-FM's broadcasting licence should the station not resume its operations and failed to comply with its regulatory obligations by 31 October 2014. In addition, the Commission directed the licensee to submit, by no later than 1 October 2014, all of CFAO-FM's annual returns for each broadcast year.
6. In the event that the station resumed broadcasting and the licensee demonstrated that it is Canadian, the Commission indicated that it could renew the licence for a short-term period and require that the licensee submit a plan to fulfill the CCD shortfall apparently incurred since 2009 and to demonstrate its capacity to maintain the station's operations and to comply with its regulatory obligations.

Intervention

7. The Commission received an intervention opposing the renewal of CFAO-FM's licence from My Broadcasting Corporation (MBC). MBC is the licensee of CIMA-FM Alliston. The public record for this application is available on the

Commission's website at www.crtc.gc.ca or by using the application number provided above.

8. MBC submitted that, over the licence term, CFAO-FM had been on the air for only 11 months. MBC argued that renewing CFAO-FM's licence would send a clear message that it is acceptable for a radio licensee to blatantly disregard the conditions of licence under which all radio broadcasters operate.

Licensee's reply

9. In reply, the licensee submitted that MBC had asked the Commission not to renew CFAO-FM's licence because MBC did not want a community-oriented competitor in Alliston. The licensee indicated that it had the highest respect for the Commission and that it had responded to many of the Commission's inquiries.

Commission's analysis and decisions

Off-air status of CFAO-FM

10. In its licence renewal form, the licensee stated that CFAO-FM was off-air due to financial problems and transmitter issues and indicated that it planned to resume broadcasting in January 2014. In reply to a letter from Commission staff dated 22 January 2014, the licensee indicated that CFAO-FM had not been broadcasting since July 2011 and would resume broadcasting by 1 April 2014.
11. In a letter dated 5 May 2014, the licensee stated that the station was still not on air because it had lost another transmitter site and that an engineer was working on the problem. In November 2014, the Department of Industry confirmed to the Commission that CFAO-FM had not resumed broadcasting.
12. The Commission considers that the fact that CFAO-FM has been and remains off-air is a very serious matter since the station is making no contribution to the implementation of the goals set out in the *Broadcasting Act* or providing any service to residents of the community that it is licensed to service.

Non-compliance

Submission of annual returns

13. 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.

14. According to Commission records, the licensee did not file annual returns for any of the 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 broadcast years.

15. In response to a letter from Commission staff dated 4 February 2014, the licensee indicated that it intended to file the missing annual returns by 14 March 2014. However, the Commission did not receive the annual returns by that date.
16. Commission staff sent another letter on 30 April 2014 asking the licensee to explain why it did not file the annual returns as promised. In a letter dated 5 May 2014, the licensee stated that it had assumed that it did not have to file the annual returns for the years that the station was not on the air. It made a commitment to file the annual returns for the one broadcast year during which the station was operating by 15 June 2014.
17. Commission staff sent another letter to the licensee on 18 July 2014 requiring it to submit, by no later than 1 August 2014, the annual returns for each broadcast year of the licensee term whether or not the station had been on the air. In its reply of 1 August 2014, the licensee indicated that it would only be able to provide the annual return for the 2009-2010 broadcast year since it had ceased operations thereafter. In addition, the licensee indicated that annual returns had been destroyed.
18. To date, the Commission has not received any annual returns for CFAO-FM.
19. Accordingly, the Commission finds the licensee in non-compliance with section 9(2) of the Regulations relating to the provision of CFAO-FM's annual returns for the 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 broadcast years.

Canadian content development contributions

20. As a commercial FM radio station CFAO-FM is subject to section 15(2) of the Regulations with respect to basic CCD contributions.
21. Prior to its amendment, which came into force on 1 September 2013, section 15(2) of the Regulations stated:

Except as otherwise provided under a condition of its licence that refers expressly to this subsection and subject to subsection (3), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station or ethnic station shall contribute the following amount annually to eligible initiatives:

 - a) If the licensee's total revenues are less than \$625,000, \$500;
 - b) If the licensee's total revenues are at least \$625,000 but not more than \$1,250,000, \$1,000; and
 - c) If the licensee's total revenues are more than \$1,250,000, \$1,000 plus one half of one percent of those revenues that are in excess of \$1,250,000.
22. The following revised contribution requirements would apply by virtue of the amendments to section 15(2) of the Regulations for broadcast years 2013-2014 forward:

Except as otherwise provided under a condition of its licence that refers expressly to this subsection and subject to subsection (3), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station or ethnic station shall, if the licensee's total revenues are more than \$1,250,000, contribute annually to eligible initiatives \$1,000 plus one half of one percent of those revenues that are in excess of \$1,250,000.

23. The licensee is also subject to the condition of licence 2 set out in Broadcasting Decision 2008-147:

In addition to the required basic annual contribution to Canadian content development (CCD), set out in section 15 of the *Radio Regulations, 1986*, as amended by *Regulations Amending the Radio Regulations, 1986*, SOR/2008-117, 28 May 2008, announced in *Amendments to the Radio Regulations, 1986 - Implementation of the Commercial Radio Policy 2006* and the *Digital Radio Policy - Regulatory policy*, Broadcasting Public Notice CRTC 2008-67, 23 July 2008, the licensee shall, commencing in the first year of operation, contribute a minimum of \$1,000 per broadcast year to the promotion and development of Canadian content. This amount shall vary over the course of the licence term based on the following annual contributions: Year 1: \$1,000; Year 2: \$1,700; Year 3: \$1,500; Year 4: \$1,500; Year 5: \$2,000; Year 6: \$2,500; and Year 7: \$2,500.

24. The Commission had not received any proof of payment for CCD contributions over CFAO-FM's licence term for the 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 broadcast years.
25. In its letter of 4 February 2014, the licensee made a commitment to make all outstanding CCD commitments upon relaunch of the station. However, as noted above, CFAO-FM is still off air.
26. It is not possible to accurately determine the extent to which CFAO-FM is in compliance with section 15(2) of the Regulations since basic CCD contributions were, and continue to be, dependent on the station's revenues. These revenues are reported in annual returns. As indicated above, the licensee has not filed any annual returns for CFAO-FM over the past licence term.
27. Prior to the 2013-2014 broadcast year, licensees with revenues less than \$625,000 were required, pursuant to section 15(2) of the Regulations, to make a minimum basic CCD contribution of \$500 annually. Even if the licensee's revenues were \$0 for all broadcast years, it would still be subject to a required basic CCD contribution of \$500 for each year that CFAO-FM was licensed prior to the 2013-2014 broadcast year.
28. Since the licensee has failed to demonstrate that any of the required CCD contributions, both basic or additional, were made, the Commission finds the licensee in non-compliance with section 15(2) of the Regulations and with condition

of licence 2 set out in Broadcasting Decision 2008-147 with respect to CCD contributions for the 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 broadcast years.

Provision of information

29. Section 9(4) of the Regulations states:

At the request of the Commission, a licensee shall respond to:

- (a) any complaint or request for resolution of a dispute filed by any person or any request for information regarding programming originated or distributed by the licensee or regarding the licensee's technical operations, subscribership, financial affairs or ownership; and
 - (b) any request for information regarding the licensee's adherence to the conditions of its licence, the Act, these Regulations, industry standards, practices or codes or any other self-regulatory mechanism of the industry.
30. In its application form, the licensee did not provide information to ensure that 2188301 Ontario Corporation is a "qualified corporation" pursuant to the Direction to the CRTC (*Ineligibility of non-Canadians*) (the Direction). This information is necessary to ensure that the station is owned and controlled by Canadians. In its absence, the Commission is unable to determine whether 2188301 Ontario Corporation is eligible to hold a broadcasting licence in accordance with the Direction.
31. Commission staff requested that the licensee file this information in a letter dated 14 January 2011. This request was reiterated in a letter dated 18 July 2014. The licensee has not provided the requested information.
32. In light of the above, the Commission finds the licensee in non-compliance with section 9(4) of the Regulations.

Conclusion

33. CFAO-FM has been off the air for most of the past licence term and has not resumed operations despite the deadline of 31 October 2014 set out in the Notice. As a result, CFAO-FM is making no contribution to the implementation of the goals set out in the *Broadcasting Act* nor is it providing any service to residents of the community that it is licensed to service.
34. The licensee is also in non-compliance with the Regulations regarding submission of CFAO-FM's annual returns. The licensee has not submitted any returns for the licence term despite the deadline of 1 October 2014 set out in the Notice.
35. The licensee is further in non-compliance with the Regulations regarding the provision of information to the Commission needed to assess its compliance with

the *Direction to the CRTC (Ineligibility of non-Canadians)*, as well as with provisions of the Regulations and its conditions of licence with respect to Canadian content development contributions for CFAO-FM.

36. In light of the above, the Commission **denies** the application to renew the broadcasting licence for the English-language low-power commercial radio programming undertaking CFAO-FM Alliston, Ontario.

Secretary General

Related documents

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2014-474, 12 September 2014
- *Various radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2014-359, 8 July 2014
- *English-language FM radio station in Alliston*, Broadcasting Decision CRTC 2008-147, 28 July 2008