



Broadcasting Decision CRTC 2015-35

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Route reference: Part 1 application posted on 12 September 2014

Ottawa, 6 February 2015

Golden West Broadcasting Ltd.
Drumheller, Alberta

Application 2014-0889-9

CHOO-FM Drumheller – Licence amendment

*The Commission **denies** an application to amend the broadcasting licence for the English-language commercial radio station CHOO-FM Drumheller to remove the requirement that it broadcast 10% folk and folk-oriented music each broadcast week.*

Application

1. Golden West Broadcasting Ltd. (Golden West) filed an application to amend the broadcasting licence for the English-language commercial radio station CHOO-FM Drumheller to remove the requirement that it devote 10% of its musical selections each broadcast week to folk and folk-oriented music.
2. Golden West stated that it was unaware that CHOO-FM was required to broadcast 10% folk and folk-oriented music each week. It further stated that its presentation at the 2008 public hearing as a result of which it was licensed (see Broadcasting Decision 2008-194) “did not at any time reference having folk or folk-oriented selections on the playlist.” Finally, the licensee indicated that approval of the amendment would generate only minor programming changes, noting that CHOO-FM would still provide some folk music, but that it felt that the requirement to broadcast 10% such music was too restrictive and was not in the best interest of the community.
3. The Commission did not receive any interventions regarding this application. The public record for the application can be found on the Commission’s website at www.crtc.gc.ca or by using the application number provided above.

Commission’s analysis

Non-compliance

4. Monitoring of CHOO-FM’s programming by Commission staff for the week of 6-12 October 2013 revealed instances of apparent non-compliance with the following requirements:

- the condition of licence requiring that the station devote 10% of its musical selections in each broadcast week to selections from music content subcategory 32 (Folk and folk-oriented). Specifically, CHOO-FM broadcasted 0.76% rather than 10% such musical selections in that week.
 - sections 8(4) and 8(5) of the *Radio Regulations, 1986* (the Regulations) regarding the submission of complete and accurate program logs and records. Specifically, a number of hours of airplay were missing from the submitted audio logs. After being advised of this fact by Commission staff, the licensee provided the missing hours. However, it was further found that some music selections broadcast were missing from the music list and that the list did not accurately reflect what was in the program logs.
5. In response to a 17 July 2014 letter by Commission staff, Golden West stated the following in a letter dated 31 July 2014:
- the non-compliance with the requirement regarding folk and folk-oriented music occurred because it was unaware that it had a condition of licence to this effect. The licensee added that it had never intended to play this form of music and that the requirement was “not a good fit” for CHOO-FM’s musical sound or its listeners. Nonetheless, it stated that it would take the following corrective actions to ensure compliance:
 - Monday to Sunday from 10:30 p.m. to midnight, the station would air only songs that fall into subcategory 32, based on the Commission’s definition as set out in Broadcasting Regulatory Policy 2010-819, which would account for approximately 25 subcategory 32 selections every day of the broadcast week, beginning 1 August 2014; and
 - “Drumbeat,” an in-house, locally produced 30-minute program, would feature five folk and folk-oriented songs performed by local artists and would air Sundays at 8 a.m. and repeat again at 9 p.m., starting 2 August 2014.¹
 - the audio log and the music log submitted by the station did not match due to the use of a new software platform. It also indicated that protocol for manually inserting songs at the local level was not followed and that it had since made very clear to its announcers that they could not manually insert songs from outside the music schedule without prior approval.
6. The Commission’s approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2011-347 (the Bulletin).² Under that approach, each instance of non-compliance is evaluated in its context and in light of factors such

¹ In a letter dated 3 October 2014, the licensee confirmed that these corrective measures had been implemented as scheduled.

² This bulletin was subsequently updated and replaced by Broadcasting Information Bulletin 2014-608.

as the quantity, recurrence and seriousness of the non-compliance. The circumstances, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.

7. In the Bulletin, the Commission stated that it would take into account the criteria set out above when considering applications for licence amendments, noting that it is the licensee's responsibility to demonstrate that it is in full compliance with its regulatory obligations when applying for such amendments or licence renewal. In this case, the Commission notes that the licensee's apparent non-compliance with its conditions of licence relates to the same requirement it wishes to remove, namely regarding the broadcast of subcategory 32 music. Given this fact and the circumstances set out below, the Commission considers that it would not be appropriate to approve the requested amendment.

Integrity of the licensing process

8. The licence for CHOO-FM, which launched 28 April 2009, was granted in Broadcasting Decision 2008-194 following a competitive process in which the diversity of the proposed music format and the quality of the business plan were criteria used in assessing the merits of the applications. At the hearing, Golden West proposed to broadcast 10% subcategory 32 music as part of its Adult Contemporary format and indicated its willingness to accept this as a condition of licence.³ The proposed level of subcategory 32 music was a key factor taken into account in assessing the diversity of the proposed format. In licensing the station, the Commission stated that it considered that the programming proposed by Golden West and the audience targeted by its proposed service would repatriate out-of-market tuning, in particular to out-of-market radio stations that operate under a format similar to that proposed by Golden West.
9. The Commission's general practice has been to expect that an applicant awarded a licence as part of a competitive process maintain its programming commitments for at least the first term of its licence and to evaluate any amendment requests on a case-by-case basis while reviewing the station's compliance with its conditions of licence and the Regulations.
10. Given the preceding, as well as the licensee's apparent non-compliance with its conditions of licence and the Regulations, the Commission is of the view that approving the requested amendment would call into question the integrity of the licensing process.

Conclusion

11. In light of all of the above, the Commission **denies** the application by Golden West Broadcasting Ltd. to amend the broadcasting licence for the English-language commercial radio programming undertaking CHOO-FM Drumheller to remove the

³ 27 May 2008 public hearing, transcript, volume 1, paragraphs 1147-1159.

requirement that it devote 10% of its musical selections each broadcast week to folk and folk-oriented music.

12. The station's performance, including its apparent non-compliance with its condition of licence and the Regulations, will be examined at the renewal of its licence, which expires 31 August 2015.

Secretary General

Related documents

- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010
- *Licensing of a new radio station to serve Drumheller, Alberta*, Broadcasting Decision CRTC 2008-194, 21 August 2008