



Broadcasting Decision CRTC 2015-375

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Reference: 2015-51

Ottawa, 14 August 2015

Golden West Broadcasting Ltd.
Drumheller, Alberta

Application 2014-0854-2, received 28 August 2014

CHOO-FM Drumheller – Licence renewal

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CHOO-FM Drumheller from 1 September 2015 to 31 August 2020.*

This shortened licence term will allow for an earlier review of the licensee's compliance with its regulatory requirements.

Application

1. Golden West Broadcasting Ltd. (Golden West) filed an application to renew the broadcasting licence for the English-language commercial radio station CHOO-FM Drumheller, Alberta, which expires 31 August 2015. The Commission did not receive any interventions regarding this application.

Non-compliance

2. In Broadcasting Notice of Consultation 2015-51, the Commission stated that the licensee is in apparent non-compliance with requirements relating to the broadcast of musical selections. Specifically, the licensee was in apparent non-compliance with the following:
 - sections 8(4) and 8(5) of the *Radio Regulations, 1986* (the Regulations) regarding the submission of complete and accurate program logs and records; and
 - its condition of licence requiring that the station devote 10% of its musical selections in each broadcast week to selections from content subcategory 32 (Folk and folk-oriented).
3. Moreover, in Broadcasting Decision 2015-35, the Commission denied a request by Golden West to amend CHOO-FM's broadcasting licence to remove the requirement that it broadcast 10% folk and folk-oriented music each broadcast week. It cited the station's non-compliance as its reason for denying the application and stated that the station's performance would be examined as part of its renewal application.

4. Monitoring of CHOO-FM's programming for the week of 6 to 12 October 2013 revealed that there were 11.5 hours of missing programming for 9 October and 3.5 hours of missing programming for 12 October. In addition, certain musical selections broadcast were missing from the music list, and the list did not accurately reflect what was in the program logs. This review also revealed that the level of music drawn from subcategory 32 for that broadcast week was 0.76%, rather than the required 10%.
5. The licensee indicated that the non-compliance with the requirement regarding folk and folk-oriented music occurred because it was unaware that it was subject to such a condition of licence. It 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, the licensee 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 under subcategory 32, as defined in Broadcasting Regulatory Policy 2010-819, which would account for approximately 25 subcategory 32 selections every day of the broadcast week; and
 - "Drumbeat," an in-house, locally produced 30-minute program, would feature five folk and folk-oriented songs all performed by local artists.
6. Golden West also indicated that it has established a permanent, separate category in its music scheduling software to track the broadcast of subcategory 32 selections to ensure compliance. Moreover, daily and weekly songs are executed by top-level employees to ensure that minimum requirements are either met or exceeded.
7. Finally, with respect to sections 8(4) and 8(5) of the Regulations, the licensee stated that the audio log and music log that it had submitted did not match due to the deployment 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.
8. In light of the above, the Commission finds Golden West in non-compliance, for the broadcast week of 6 to 12 October 2013, with its condition of licence requiring that the station devote 10% of its musical selections in each broadcast week to selections from music content subcategory 32, as well as with sections 8(4) and 8(5) of the Regulations regarding the submission of complete and accurate program logs and records.

Regulatory measures

9. The Commission's approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2014-608. Under that approach, each instance of non-compliance is evaluated in its context and in light of factors such 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.

10. The submission of accurate program logs and records enables the Commission to conduct an analysis of a licensee's programming to verify compliance with the Regulations and its conditions of licence. The maintaining of logs and records also enables the Commission to investigate a station's programming in the case of complaints. Accordingly, the Commission considers any breach of these obligations a serious matter.
11. Further, it is important that radio stations respect the Commission's licensing process by providing the programming that they proposed to offer to listeners by condition of licence and that is required by the Regulations. In the case of the licensee's explanation that it was not aware of its condition of licence requiring that it devote 10% of its musical selections in each broadcast week to selections from content subcategory 32, the station's original licensing decision (Broadcast Decision 2008-194) clearly included this specific commitment as a condition of licence.
12. As set out in Broadcasting Regulatory Policy 2014-554, for stations that are in or appear to be in non-compliance, the following measures may be applied on a case-by-case basis depending on the nature of the non-compliance:
 - renew the licence for a short term;
 - impose additional conditions of licence;
 - call the licensee to a public hearing to respond to and discuss apparent non-compliance;
 - following a public hearing, issue a mandatory order requiring the licensee to comply with regulatory requirements. Such orders are made orders of the Federal Court and can be enforced through contempt of court proceedings;
 - suspend the licence;
 - not renew the licence;
 - revoke the licence
13. In that same regulatory policy, the Commission introduced further measures to address the potential harm that could be caused to the broadcasting system by non-compliance with various regulations and conditions of licence. For serious cases of non-compliance, the Commission considered it appropriate to introduce a measure by which, in certain circumstances, stations in non-compliance would announce that finding on air, an approach similar to that currently used by the Canadian Broadcast Standards Council (CBSC). In regard to non-compliance with programming or CCD

requirements in particular, it considered it appropriate to introduce a measure by which, in certain circumstances, radio station licensees in non-compliance would be required to direct all further CCD contributions to funds such as FACTOR, MUSICACTION or the Community Radio Fund of Canada (CRFC), rather than to discretionary initiatives such as talent contents, or make additional CCD contributions that are over and above those required by the Regulations and by existing condition of licence.

14. In regard to the present case, Commission staff asked¹ CHOO-FM to comment on the following ways to address, during the course of the next licence term, the station's repeated non-compliance:
 - measures such as those set out in paragraph 12 above;
 - a requirement to make additional CCD contributions over and above those required pursuant to the Regulations or by condition of licence; and
 - a requirement to announce on air that the station has been in non-compliance and that the licensee has put measures into place to ensure that the non-compliance does not occur again.
15. In reply, Golden West indicated that while it recognizes that the Commission may impose a shortened licence renewal or other sanctions, it feels it has rectified the situation and has a comprehensive plan in place to make certain this does not occur again.
16. The Commission acknowledges the explanations provided by the licensee and notes the measures it has put in place to address the various instances of non-compliance and to ensure compliance going forward. However, given the nature and extent of the non-compliance, a shortened licence renewal of five years for CHOO-FM is appropriate.
17. Further, given the seriousness of the non-compliance and the harm caused to the broadcasting system by the non-compliance, the Commission finds it appropriate to require Golden West to make, by the end of the 2015-2016 broadcast year, an additional CCD contribution that is over and above those required by the Regulations or by existing conditions of licence. Based on CHOO-FM's annual revenues and taking into account the serious nature of the non-compliance, the Commission finds that an additional contribution of \$5,765 is appropriate. A **condition of licence** to that effect is set out in the appendix to this decision.

Conclusion

18. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CHOO-FM

¹ in a letter dated 23 January 2015

Drumheller from 1 September 2015 to 31 August 2020. This shortened licence term will allow for an earlier review of the licensee's compliance with its regulatory requirements. The **conditions of licence** are set out in the appendix to this decision.

Reminder

19. Pursuant to section 22 of the *Broadcasting Act*, the broadcasting licence renewed in this decision will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry lapses.

Employment equity

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

Secretary General

Related documents

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2015-51, 18 February 2015
- *CHOO-FM Drumheller – Licence amendment*, Broadcasting Decision CRTC 2015-35, 6 February 2015
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *Licensing of a new radio station to serve Drumheller, Alberta*, Broadcasting Decision CRTC 2008-194, 21 August 2008

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

Appendix to Broadcasting Decision CRTC 2015-375

Conditions of licence and expectation for the English-language commercial radio programming undertaking CHOO-FM Drumheller, Alberta

Conditions of licence

1. The licensee shall adhere 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, as well as to the conditions set out in the broadcasting licence for this undertaking.
2. As an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations), the licensee shall devote:
 - a) in each broadcast week, at least 40% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety; and
 - b) between 6 a.m. and 6 p.m., in any period beginning on Monday of a week and ending on Friday of the same week, at least 40% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety.

For the purposes of these conditions, “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meaning as that set out in the Regulations.

3. The licensee shall devote 10% of all musical selections broadcast each broadcast week to selections drawn from content subcategory 32 (Folk and folk-oriented).
4. To fulfill its outstanding commitments to Canadian content development (CCD) set out in Appendix 2 to *Licensing of a new radio station to serve Drumheller, Alberta*, Broadcasting Decision CRTC 2008-194, 21 August 2008, the licensee shall file, by 30 November of each year and in a form deemed acceptable by the Commission, all proof of payment regarding the required contribution to CCD to be made in the broadcast year ending the previous 31 August in addition to the required basic annual CCD contribution set out in section 15 of the *Radio Regulations, 1986*, as follows:
 - \$25,000 in the 2014-2015 broadcast year; and
 - \$10,000 from the partial 2008-2009 first year of operation by the end of the 2014-2015 broadcast year.

At least 20% of the required contributions made in each broadcast year shall be allocated to FACTOR or MUSICACTION. Any remaining amount shall be

allocated to an eligible CCD initiative as described in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

5. The licensee shall, by no later than 31 August 2016, make a \$5,765 contribution to Canadian content development (CCD) that is over and above the CCD contributions currently required pursuant to the *Radio Regulations, 1986* or by condition of licence. This contribution shall be devoted to FACTOR, MUSISCATION and/or an eligible initiative as set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006. In addition, the licensee shall file, by 30 November 2016 and in a form deemed acceptable by the Commission, proof of payment regarding the additional contribution to CCD as well as supporting documentation for the eligibility of the contribution if it is not made in whole or in part to FACTOR or MUSICACTION.

Expectation

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.