



## Broadcasting Decision CRTC 2015-395

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Reference: 2015-199

Ottawa, 25 August 2015

**RNC MEDIA Inc.**  
Gatineau, Quebec

*Application 2014-0939-2, received 15 September 2014*

### **CHLX-FM Gatineau – Licence renewal and amendment**

*The Commission **renews** the broadcasting licence for the French-language commercial radio station CHLX-FM Gatineau from 1 September 2015 to 31 August 2022.*

*The Commission **denies** the licensee's request to delete CHLX-FM's condition of licence relating to the requirement to broadcast jazz and blues music.*

#### **Application**

1. RNC MEDIA Inc. (RNC) filed an application to renew the broadcasting licence for the French-language commercial radio station CHLX-FM Gatineau, which expires 31 August 2015.
2. RNC also requested to delete the following condition of licence, set out in Broadcasting Decision 2008-221:
  3. In each broadcast week, the licensee shall devote a minimum of 20% of its music programming to jazz music selections (subcategory 34) broadcast in their entirety.
3. In support of its request, RNC indicated that broadcasting 20% of music selections in a specialty format that targets an older audience and that differs from the rest of its programming makes advertisers less interested in placing advertisements, which has a negative impact on the station's profitability.

#### **Intervention and reply**

4. The Commission received an intervention offering comments from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), to which RNC replied. ADISQ expressed concern that by devoting all of its music programming to popular "Adult Contemporary" selections, in the event of Commission approval, CHLX-FM would completely eliminate the window currently devoted to jazz and blues music in the Ottawa-Gatineau market. According to ADISQ, this would be a major loss for lovers and creators of this type of music,

since there is no other station in the market broadcasting jazz and blues music, according to the information provided by RNC in the public record for this proceeding.

5. RNC replied that on the contrary, Ottawa-Gatineau listeners can easily listen to jazz and blues on CIDG-FM,<sup>1</sup> the Canadian Broadcasting Corporation's (CBC) French-language service ICI Musique, CBC Radio 2 and CBC Music.
6. The public record for this application can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the application number provided above.

### **Non-compliance**

7. In Broadcasting Notice of Consultation 2015-199, the Commission stated that the licensee was in apparent non-compliance with its condition of licence relating to the broadcast of content subcategory 34 (Jazz and blues) music.
8. The analysis of CHLX-FM's programming for the week of 20 to 26 October 2013 revealed that the station devoted 18.4% of its programming to musical selections drawn from subcategory 34, 1.6% below the 20% threshold required by condition of licence 3 set out in Broadcasting Decision 2008-221. This is CHLX-FM's first instance of non-compliance.
9. According to RNC, the non-compliance is not a result of jazz and blues music not being broadcast, but rather of the Commission having reclassified several music selections from subcategory 34 to category 2 (Popular Music). It indicated that most of the selections reclassified by the Commission met the criteria for jazz and blues, except for certain selections that belonged to category 2. Accordingly, the licensee reclassified those selections into category 2 so that they would no longer be broadcast in the time slots devoted to jazz and blues music.
10. The Commission notes the comments and explanations from RNC. However, it remains of the view that the reclassified selections correspond to the definition of subcategory 21<sup>2</sup> (Pop, rock and dance) selections, which stipulates that this subcategory includes musical selections listed in the charts. As such, all of the selections on CHLX-FM's music list that were on the charts moved from category 3 to category 2.
11. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to the broadcast of content sub-category 34 musical selections.

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<sup>1</sup> This English-language radio station was licensed in Broadcasting Decision 2008-222.

<sup>2</sup> As set out in Broadcasting Regulatory Policy 2010-819

## Regulatory measures

12. The Commission's approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2014-608. This new, more flexible approach enables the Commission to impose measures other than a short-term licence renewal to correct instances of non-compliance. Under this 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 leading to the non-compliance, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.
13. In Broadcasting Regulatory Policy 2014-554, the Commission concluded that for non-compliance relating to programming, it could, in certain circumstances, require radio station licensees found to be in non-compliance to make additional Canadian content development (CCD) contributions that are over and above those required by the *Radio Regulations, 1986* (the Regulations) and by existing condition of licence, or to direct all further CCD contributions to funds such as FACTOR, MUSICACTION or the Community Radio Fund of Canada, rather than to discretionary initiatives such as talent contests.
14. The Commission has examined the public record for this application and is satisfied with the licensee's explanations relating to the non-compliance and the measures it has put in place to address the non-compliance. However, although this is the first licence term in which CHLX-FM is in non-compliance and that the measures taken by the licensee should correct the situation, the Commission considers that the non-compliance is serious and that the harm caused to the broadcasting system is real.
15. Given the seriousness of the non-compliance relating to the broadcast of music from subcategory 34, the Commission considers it appropriate to require CHLX-FM to pay, by no later than 31 August 2016, an additional contribution to CCD that is over and above that required by the Regulations or by condition of licence. This is a compensatory measure for the harm caused to the broadcasting system by the non-compliance. Based on CHLX-FM's annual revenues and taking into account the serious nature of the non-compliance, the Commission finds that an additional contribution of \$540 is appropriate. A **condition of licence** to that effect is set out in the appendix to this decision.
16. In light of this additional measure, the Commission considers it appropriate to renew the broadcasting licence for CHLX-FM for a full seven-year term.

## Licence amendment

17. As noted above, RNC wishes that CHLX-FM be no longer required, by condition of licence, to broadcast jazz and blues music.
18. As set out in Broadcasting Information Bulletin 2014-608, the Commission's general practice is to deny an application for licence amendment when it is directly linked to

an instance of non-compliance. Licensees must demonstrate that they are operating their stations in compliance with their conditions of licence prior to filing such amendment applications with the Commission.

19. The Commission considers that the non-compliance raised is serious and that an exception to its general practice would not be appropriate in this case.
20. Consequently, the Commission **denies** RNC's request to delete CHLX-FM's condition of licence relating to the requirement to broadcast jazz and blues music.

## **Conclusion**

21. In light of all of the above, the Commission **renews** the broadcasting licence for the French-language commercial radio programming undertaking CHLX-FM Gatineau from 1 September 2015 to 31 August 2022. The **conditions of licence** are set out in the appendix to this decision.
22. The Commission emphasizes the importance it places on a licensee's fulfillment of its regulatory requirements. It is the licensee's responsibility to ensure that it is aware of and adheres to those requirements at all times.
23. Any future non-compliance could lead to additional measures, including short-term renewal, suspension, non-renewal or revocation of the licence pursuant to sections 9 and 24 of the *Broadcasting Act* (the Act).

## **Reminder**

24. Pursuant to section 22 of the 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**

25. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity 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 2015-199, 15 May 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
- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010
- *Licensing of new radio stations to serve Ottawa and Gatineau*, Broadcasting Decision CRTC 2008-222, 26 August 2008
- *CHLX-FM Gatineau - Licence amendment and renewal*, Broadcasting Decision CRTC 2008-221, 26 August 2008, as corrected by Broadcasting Decision CRTC 2008-221-1, 3 September 2008, and Broadcasting Decision CRTC 2008-221-2, 25 November 2008

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

## Appendix to Broadcasting Decision CRTC 2015-395

### Conditions of licence for the French-language commercial radio programming undertaking CHLX-FM Gatineau, Quebec

#### 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 the undertaking.
2. In each broadcast week, the licensee shall devote a minimum of 20% of its music programming to jazz music selections (subcategory 34) broadcast in their entirety.
3. In addition to the required basic annual contribution to Canadian content development (CCD), set out in section 15 of the *Radio Regulations, 1986*, the licensee shall make an annual contribution of \$8,000 to the promotion and development of Canadian content.

Of this amount, not less than 20% per broadcast year shall be allocated to FACTOR and/or MUSICACTION. The remaining amounts of this additional CCD contribution shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

4. The licensee shall, by no later than 31 August 2016, make a contribution of \$540 to Canadian content development (CCD) that is over and above that required pursuant to the *Radio Regulations, 1986* or by condition of licence. This contribution shall be devoted to FACTOR, MUSICACTION 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.
5. The licensee is authorized to operate its station in accordance with a local sales agreement until 31 August 2019.