



Broadcasting Decision CRTC 2019-270

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Reference: Part 1 licence renewal application posted on 28 February 2019

Ottawa, 31 July 2019

Vista Radio Ltd.
Barry's Bay, Ontario

Public record for these applications: 2018-0587-1 and 2018-0594-6

CHBY-FM Barry's Bay – Licence renewal and amendment

*The Commission **renews** the broadcasting licence for the English-language commercial radio station CHBY-FM Barry's Bay from 1 September 2019 to 31 August 2025. The Commission **approves** Vista Radio Ltd.'s application to amend the broadcasting licence for CHBY-FM related to its over-and-above Canadian content development (CCD) condition of licence. CHBY-FM will continue to make over-and-above CCD contributions until the end of the 2021-2022 broadcast year.*

Application

1. Vista Radio Ltd. (Vista) filed an application (2018-0587-1) to renew the broadcasting licence for the commercial radio station CHBY-FM Barry's Bay, Ontario, which expires 31 August 2019.
2. Vista also filed an application (2018-0594-6) to amend the broadcasting licence for CHBY-FM regarding its over-and-above Canadian content development (CCD) condition of licence, set out in Broadcasting Decision 2012-577.
3. The Commission did not receive any interventions regarding these applications.

Non-compliance

4. Section 9(3)(b) of the *Radio Regulations, 1986* (the Regulations) sets out requirements relating to a list of musical selections broadcast by the licensee for any period specified by the Commission.
5. According to the Commission's records, the licensee did not comply with this requirement for the requested broadcast week of 22-28 October 2017. Specifically, 13 musical selections aired in that period were not included in the music list.
6. Vista explained that the audio logger recordings did not match due to a computer clock error associated with the logger files. It indicated that it has since implemented a new state-of-the-art logger system to avoid similar issues in the future.

7. Given the above, the Commission finds the licensee in non-compliance with section 9(3)(b) of the Regulations.

Regulatory measures

8. The Commission's approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2014-608. 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 in question, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.
9. In this case, the licensee has acknowledged its non-compliance, demonstrated an understanding of the regulatory obligation and taken the appropriate corrective actions to address the issue. As a result, the Commission is confident that the measures that the licensee has put in place will allow it to operate the station in compliance with its regulatory obligations in the future.
10. Accordingly, the Commission considers that it would be appropriate to renew the licence for CHBY-FM for a period of six years.

Licence amendment

11. The licensee applied to amend condition of licence 22 set out Broadcasting Decision 2012-577, which requires CHBY-FM to make an annual over-and-above CCD contribution of \$6,000 (\$42,000 over seven consecutive broadcast years) so that it no longer has to make over and above CCD payments after the 2021-2022 broadcast year. Vista stated that CHBY-FM is now an established radio station and will have fulfilled its over and above CCD commitment by that time.
12. It is the Commission's general practice to require that radio stations make over-and-above CCD contributions over seven consecutive broadcast years, upon commencement of operations.
13. CHBY-FM began operating in the 2015-2016 broadcast year. As such, the Commission finds it appropriate to require that the licensee continue to make over-and-above CCD contributions until the end of the 2021-2022 broadcast year in order to fulfil its seven-year obligation. The new condition of licence, which is set out in the appendix to this decision, sets out the years in which the licensee must make this over and above CCD contribution.

Conclusion

14. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CHBY-FM Barry's Bay from 1 September 2019 to 31 August 2025. The **conditions of licence** are set out in the appendix to this decision.

15. Further, the Commission **approves** Vista Radio Ltd.'s application to amend the broadcasting licence for CHBY-FM related to its over-and-above CCD condition of licence. CHBY-FM will continue to make over-and-above CCD contributions until the end of the 2021-2022 broadcast year. A **condition of licence** to that effect is set out in the appendix to this decision.

Reminders

16. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. The submission of complete and accurate radio monitoring materials enables the Commission to conduct an analysis of a station's programming to verify compliance with regulatory obligations. The retention of these radio monitoring materials makes it possible for the Commission to investigate a station's programming in the case of complaints. As such, a licensee's failure to file requested material in a timely manner or to file such material at all affects the Commission's ability to adequately perform its duty to independently confirm the licensee's adherence to regulatory and licence requirements. These filings also become important indicators of whether the licensee has the willingness, ability and knowledge necessary to bring itself into compliance and maintain such compliance.

17. The Commission reminds the licensee that it must comply at all times with the requirements set out in the *Broadcasting Act* (the Act), the Regulations and its conditions of licence.

18. 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

19. Because Vista 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

- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Various radio programming undertakings – Acquisition of assets*, Broadcasting Decision CRTC 2012-577, 19 October 2012

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2019-270

Terms, conditions of licence and expectation for the commercial radio programming undertaking CHBY-FM Barry's Bay, Ontario

Terms

The licence will expire 31 August 2025.

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. The licensee shall, 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)*, in any broadcast week:
 - (a) devote, in that broadcast week, 40% or more of its musical selections from content category 2 (Popular music) to Canadian selections broadcast in their entirety; and
 - (b) devote, between 6 a.m. and 6 p.m., in the period from Monday to Friday of the same broadcast week, 40% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.
3. In order to fulfil its remaining obligations set out in condition of licence 22 set out in the appendix to *Various programming undertakings – Acquisition of assets*, Broadcasting Decision CRTC 2012-577, 19 October 2012, the licensee shall, in addition to the basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Regulations*, make an annual contribution of \$6,000 in each of the 2019-2020, 2020-2021 and 2021-2022 broadcast years to the promotion and development of Canadian content.

Of this amount, the licensee shall allocate no less than 20% per broadcast year to FACTOR or MUSICACTION. The remainder 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.

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

Expectation

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