



## Broadcasting Decision CRTC 2020-78

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Reference: 2019-303

Ottawa, 28 February 2020

### **CKPM-FM Radio Ltd.**

Port Moody, British Columbia

*Public record for this application: 2018-0695-2*

*Public hearing in the National Capital Region*

*5 November 2019*

### **CKPM-FM Port Moody – Non-renewal of licence**

*The Commission **denies** the application from CKPM-FM Radio Ltd. to renew the broadcasting licence for the English-language commercial radio station CKPM-FM Port Moody, British Columbia.*

*CKPM-FM is currently off the air and has been so for several months. The Commission is of the view that the station contributes nothing towards meeting the objectives set out in the Broadcasting Act and does not provide a service to the residents of the community that it is licensed to serve.*

*Given the severity and recurrence of the current instances of non-compliance; the station's history and the licensee's actions, which clearly demonstrate its poor understanding of its conditions of licence and regulatory obligations, or a lack of willingness to respect them; the licensee's demonstrated inability to implement the necessary measures to ensure compliance; and its disregard for the Commission's authority and for its responsibilities as a broadcaster, the Commission is not convinced that the imposition of conditions of licence, the imposition of a mandatory order, a suspension of the licence or a short-term licence renewal would be effective measures. Consequently, the Commission finds that not renewing the licence is the only appropriate measure in the circumstances.*

#### **Application**

1. CKPM-FM Radio Ltd. (CKPM-FM Radio) filed an application to renew the broadcasting licence for the English-language commercial radio station CKPM-FM Port Moody, British Columbia, which expires 31 March 2020.<sup>1</sup>
2. CKPM-FM Radio is corporation controlled by Matthew G. McBride, the majority shareholder. Mr. McBride owns and controls three other English-language

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<sup>1</sup> The licence was administratively renewed from 1 September 2019 to 31 March 2020 in Broadcasting Decision 2019-256.

commercial radio stations in British Columbia: CFPV-FM Pemberton, CIMM-FM Ucluelet and CHMZ-FM Tofino.

## **Background**

3. The licence for the operation of CKPM-FM was granted following a competitive process in 2008 (see Broadcasting Decision 2008-117). In Broadcasting Decision 2015-372, the Commission renewed the licence for CKPM-FM for a short-term period of four years due to the licensee's non-compliance with sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations) relating to Canadian content, and with its conditions of licence relating to content subcategories 33 (World beat and international) and 34 (Jazz and blues) musical selections.
4. In a letter dated 5 July 2019, the licensee informed the Commission that the station was taken off air on 27 June 2019 and that it would remain off air until such time as an approved alternate broadcast site could be established.

## **Intervention**

5. The Commission received two interventions in opposition to this application and 19 interventions in support of this application.
6. The Commission received an intervention in opposition to the four renewal applications filed by Mr. McBride. At the hearing, the intervener stated that he was a former employee of the station and that he held a management position with CKPM-FM Radio. As such, he indicated that concerns regarding the stations were often brought to his attention. The intervener submitted that the four stations owned and controlled by Mr. McBride have a "legacy of non-compliance" and stated that he has concerns regarding the licensee's ability and commitment to operate the stations in a compliant manner in the future.
7. At the hearing, the licensee indicated that the intervener never held a management position with the company and hired to provide piecemeal work for a very brief period of time.
8. The other intervention in opposition was from Max Radio Society. This intervener indicated that CKPM-FM had been off air since April 2018. To support its statement, it presented messages that the licensee posted on Twitter and Facebook, confirming that the station was off air as of 26 April 2018. It also provided references to local websites indicating CKPM-FM's off-air status.
9. According to Max Radio Society, since the station has been off air for several months and given that there is no evidence to suggest that this will change in the near future, renewing the licence would not result in the best use of the frequency in the region. It added that the station's inactivity limits the diversity of voices and prevents the region from receiving the service that the licensee promised to provide in its initial application.

10. In reply to this intervention, the licensee stated that the allegation that CKPM-FM has been off the air since April 2018 is false.
11. Interventions in support this application were received from regional artists, businesses, non-profit organizations, a volunteer, the mayor of Coquitlam and individuals. These interveners noted CKPM-FM's support of the region's artists, businesses and community events. Further, one of the interveners stated that a local radio station that broadcasts live programming and welcomes guests from the region is an important tool for promoting regional events.

### **Commission's analysis and decisions**

12. In Broadcasting Notice of Consultation 2019-303, the Commission stated that CKPM-FM was in apparent non-compliance with the following:
  - section 2.2(9) of the Regulations relating to the broadcast of Canadian content category 2 (Popular Music) musical selections;
  - sections 8(1), 8(2), 9(3)(a), 9(3)(b) and 9(4) of the Regulations relating to the filing of a complete and accurate program log and music list, an accurate self-assessment report and the requirement to respond to Commission requests;
  - section 11(5)(a)(i) of the Regulations, which requires a licensee to notify the Commission, within 30 days thereafter, of the occurrence of any act, agreement or transaction that, directly or indirectly, resulted in a person alone who controls less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests;
  - section 11(6) of the Regulations, which requires the notification specified in section 11(5)(a)(i) to set out the following information:
    - the name of the person or the names of the person and the associate;
    - the percentage of the voting interests controlled by the person or by the person and the associate; and
    - a copy or a complete description of the act, agreement or transaction.
  - condition of licence 2 set out in the appendix to Broadcasting Decision 2015-372, relating to the requirement to make Canadian content development (CCD) contributions;
  - condition of licence 3 set out in the appendix to Broadcasting Decision 2015-372, relating to the requirement to make an additional CCD contribution of \$600; and

- condition of licence 5 set out in the appendix to Broadcasting Decision 2015-372, relating to the requirement to devote, each broadcast week, at least 25% of its musical selections to selections from content subcategories 33 (World beat and international) and 34 (Jazz and blues) broadcast in their entirety.

13. The Commission also expressed concerns regarding the local programming offered by the station as well as the licensee's ability and commitment to operate the station in a compliant manner. For these reasons, the Commission called the licensee to appear at a public hearing.

#### **Station off the air**

14. In a letter dated 5 July 2019, the licensee informed the Commission that CKPM-FM was taken off air on 27 June 2019. It specified that its lease was terminated following unsuccessful negotiations regarding the antenna site at the time. The licensee added that the station will be off the air until an approved alternate broadcast site can be established.
15. In response to a Commission letter dated 10 July 2019 asking the licensee to explain the situation, the licensee replied, on 17 July 2019, that the lease for the antenna site expired in 2016 and that it had then made arrangements to rent the site on a monthly basis, without a lease. It stated that there were significant increases in rental expenses over the course of the last few years, and that the site was under the control of a strata council. Given that the strata council's requests were beyond the licensee's financial capacity, the council decided, following discussions and negotiations, to end the agreement in June 2019. The licensee filed the terminated lease with the Commission.
16. The licensee also indicated that it had contracted a consulting broadcasting engineer to find a new transmission site. It submitted that it had communicated with a property management company to identify potential sites and contacted a commercial tenant to obtain leased space. Finally, the licensee indicated that it had salvaged the existing transmission system in order to reinstall it.
17. Further, the licensee stated that the possibility of a non-renewal of its licence casts doubt on the value of investing prior to renewal. According to the licensee, the Commission is, in essence, asking it to invest considerable amounts for reinstalling its system without any assurance that it will be granted a licence, which no investor or company would accept. Nevertheless, it anticipated finding a temporary solution at the end of September 2019, and a permanent solution by 31 December 2019.
18. At the public hearing, the licensee specified that CKPM-FM was still off the air and that it expected the station to be back on the air five months after its licence renewal. It submitted that the public hearing stalled any possible progress for its plans.

### **Commission's analysis**

19. When the Commission asked the licensee to comment on the allegation that the station had been off the air since April 2018, and not since June 2019 as it had stated, the licensee simply replied: "Misinformation." Based on the licensee's responses, the Commission is not convinced that the station was on air between April 2018 and June 2019. Given that different sources stated that the station went off air in April 2018, the Commission has serious concerns regarding the licensee's credibility.
20. Further, the Commission considers that the fact that the licensee had entered into a monthly agreement demonstrates an unwillingness to take the necessary measures to find a definitive site.
21. The licensee was granted a licence to operate the station following a competitive process, and the station's frequency is one of the last frequencies available in the market. Given that no service is provided to the communities that the station is licensed to serve, the off-air status of the station is serious. The Commission considers that CKPM-FM contribute nothing towards meeting the objectives set out in the *Broadcasting Act* (the Act).

### **Non-compliance**

#### **Broadcast of Canadian musical selections**

22. Section 2.2(9) of the Regulations sets out that the licensee of a commercial radio station shall, between 6:00 a.m. and 6:00 p.m., in any period beginning on a Monday and ending on the Friday of that week, devote at least 35% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.
23. During the broadcast week of 15 to 21 October 2017, only 33.1% of the content category 2 musical selections broadcast between 6:00 a.m. and 6:00 p.m., from Monday to Friday, were Canadian selections.
24. In response to a Commission letter dated 14 May 2019, the licensee explained that this apparent non-compliance was due to a different interpretation of the characteristics of content category 2 and 3 musical selections. It added that the Commission's guide in this regard is somewhat outdated. To address this issue, the licensee indicated that it would evaluate each musical selection in the station's library based on the Commission's list with the assistance of the Commission.
25. In its above-mentioned letter, the Commission also asked the licensee if additional CCD contributions would be an appropriate measure to compensate for the harm that this apparent non-compliance caused to the Canadian broadcasting system.
26. The licensee responded that the total Canadian content for the period in question was 39% and that to claim that it did not broadcast enough Canadian content and harmed the Canadian music industry was an exaggeration. The licensee also indicated that the Canadian content representing 1.9% of the missing content category 2 content from

came entirely from emerging Canadian artists that do not meet the conventional definition for content category 2 (Popular Music). It submitted that it supported jazz artists, who are very seldom heard on air.

27. Further, the licensee stated that it would agree to make additional CCD contributions provided it could allocate them to emerging Canadian artists to which it has provided air time.
28. At the public hearing, the licensee accepted responsibility for the non-compliance, but specified that the station supports local and emerging artists to a great degree.

#### **Commission's analysis and decision**

29. This is the second consecutive licence period in which the licensee has been in non-compliance with section 2.2(9) of the Regulations. In the previous licence term, the licensee indicated that it had hired a programming consultant to ensure future compliance. The Commission considers that this measure was not effective, since the consultant no longer works for the station and since the station has faced the same problems during the current licence term.
30. Section 2.2(9) of the Regulations sets out that the minimum threshold of 35% for Canadian content applies only to content category 2 (Popular Music). Although the licensee claimed to broadcast 39% Canadian content, its calculations included musical selections from content categories 2 and 3. The licensee's non-compliance is due to its classification of certain musical selections (Canadian and non-Canadian) under content category 3 (Special Interest Music), whereas they should have been classified under content category 2, based on the Commission's system. The incorrect classification decreased the percentage of Canadian musical selections drawn from content category 2. The Commission is not convinced that the licensee fully understands the regulatory requirements relating to Canadian content.
31. In light of the above, the Commission finds the licensee in non-compliance with section 2.2(9) of the Regulations.

#### **Radio monitoring materials**

32. Sections 8(1) and 8(2) of the Regulations set out the requirements relating to keeping program logs. Sections 9(3)(a) and 9(3)(b) of the Regulations set out the requirements relating to the information to be included in a station's self-assessment report and the list of musical selections broadcast for any period specified by the Commission.
33. In four separate emails, dated 14 May 2018, 7 June 2018, 18 June 2018 and 22 June 2018, the Commission asked the licensee to provide the program log for the 15 to 21 October 2017 broadcast week. On 24 June 2018, the licensee indicated that it would submit the program log, but the Commission has not received it.

34. In a letter dated 23 November 2018, in response to its apparent non-compliance, the licensee explained that the program logs from that period had been destroyed in a building flood that damaged computer hardware.
35. In addition, the self-assessment report filed by the licensee contained inconsistencies. Specifically, the number of musical selections indicated in the self-assessment report did not correspond to the number indicated in the music list.
36. There were also many errors in the music list. For example, during the week monitored, 332 musical selections were not listed in the appropriate category or subcategory. The licensee also listed some musical selections in different subcategories during the same broadcast week.
37. In response to a Commission letter dated 14 May 2019, the licensee indicated that it had installed a new operating and automation system but that it did not fully meet the complex requirements.
38. In regard to the classification of musical selections, the licensee stated that it would evaluate all the musical selections based on the Commission's lists in order to abide by the Commission's classification.
39. At the public hearing, the licensee submitted that it was prepared to purchase a new operating system and that this would solve a number of issues relating to content requirements. It specified that it would install the system immediately upon licence renewal. In addition, the licensee took responsibility for the apparent non-compliance regarding the classification of musical selections.

#### **Commission's analysis and decision**

40. Adherence to the requirements relating to the submission of program logs, self-assessment reports and music lists is fundamental to the Commission's ability to monitor a station's performance and verify its compliance with the Regulations and its conditions of licence. Further, when a licensee does not file the requested material in a timely manner or files material that contains inconsistencies, it affects the Commission's ability to independently confirm a licensee's adherence to its regulatory obligations. These filings also become important indicators as to whether the licensee has the willingness, ability and knowledge necessary to bring itself into compliance and maintain such compliance.
41. As noted above, the licensee did not file its program log, despite several reminders from the Commission. Given that the filing of program logs, self-assessment reports and accurate music lists are basic requirements to which all licensee must adhere in order to enable the Commission to assess a station's performance, the Commission considers this non-compliance to be very serious.
42. In light of the above, the Commission finds the licensee in non-compliance with sections 8(1), 8(2), 9(3)(a) and 9(3)(b) of the Regulations.

## **Commission request for information and ownership information**

43. Section 9(4) of the Regulations requires licensee to provide information regarding their adherence to regulatory requirements or their ownership.
44. Section 11(5)(a)(i) of the Regulations requires the licensee to notify the Commission, within 30 days thereafter, of the occurrence of any act, agreement or transaction that, directly or indirectly, resulted in a person alone who controls less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests.
45. Further, section 11(6) of the Regulations requires that the notification referred to in section 11(5)(a)(i) set out the following information:
  - the name of the person or the names of the person and the associate;
  - the percentage of the voting interests controlled by the person or by the person and the associate; and
  - a copy or a complete description of the act, agreement or transaction.
46. As noted above, the licensee did not respond to the Commission's request for information as part of a performance assessment of the station's programming. Despite the Commission's four requests for a revised program log, the licensee did not submit the document.
47. Moreover, on 29 September 2016, the Commission asked the licensee to file a shareholder's agreement in order to determine whether there had been any changes in the effective control of the undertaking. As it did not receive a response at that time, the Commission reiterated its request five times, but the licensee did not submit the required documents. It was only at the time of licence renewal that the minority shareholders of CKPM-FM Radio submitted the sales agreement and confirmed that there was no shareholder's agreement.
48. The licensee also failed to advise the Commission, within 30 days following the transaction, that share transactions resulted in two minority shareholders controlling over 20% of voting shares. In September 2016, about two years after the transaction and well after the 30-day notice period set out in the Regulations, the licensee submitted the names of the new shareholders and confirmed their respective ownership interests, as required pursuant to sections 11(6)(a) and 11(6)(b) of the Regulations, but it did not submit the sales agreements, as required pursuant to section 11(6)(c). The minority shareholders finally submitted the sales agreements on 13 June 2019, five years after the 30-day notice period and three years after the Commission initially requested that this information be submitted.
49. In response to a Commission letter dated 5 June 2019 asking it to explain the reasons it had not provided the requested ownership documents, the licensee did not provide an explanation. At the public hearing, it stated that it normally responds to

correspondence from the Commission within the prescribed time frames, but that it sometimes falls behind in its duties. The licensee did not, however, provide an explanation for the repeated instances of non-compliance with the Regulations.

#### **Commission's analysis and decision**

50. The Commission considers this non-compliance to be very serious given the licensee's repeated failure to respond to numerous Commission requests for information regarding two separate applications. In the Commission's view, failure to respond to a Commission inquiry is often an indication that a licensee does not understand its responsibilities as a broadcaster or does not respect the Commission's authority.
51. Further, the Commission views the licensee's attempts to explain its non-compliance as inadequate and insufficient. Consequently, it has doubts in regard to the licensee's willingness to operate the station in a compliant manner.
52. In light of the above, the Commission finds the licensee in non-compliance with sections 9(4), 11(5)(a)(i) and 11(6)(c) of the Regulations.

#### **Canadian content development contributions**

53. Condition of licence 2 set out in the appendix to Broadcasting Decision 2015-372 required the licensee to make additional CCD contributions totalling \$29,784 for the 2014-2015 through 2018-2019 broadcast years.
54. In addition, condition of licence 3 set out in the appendix to that decision required the licensee to make an over-and-above CCD contribution of \$600. The Commission imposed this requirement as a remedial measure to address the harm caused to the broadcasting system by the licensee's non-compliance with requirements relating to the broadcast of musical selections in the previous licence term.
55. According to Commission records, the licensee did not make a single CCD contribution during the 2014-2015 through 2018-2019 broadcast years, and has not made the required additional contribution of \$600.
56. In response to the Commission's letters dated 14 May 2019 and 5 June 2019 inquiring about these instances of non-compliance, the licensee submitted that the station had incurred a net loss in each year of operation and indicated that, despite never having asked the Commission about deferring the contributions, it would consult the Commission as soon as possible in order to correct the situation. The licensee added that it intended to create a planned budget for allocating funds, to clearly determine qualified recipients in advance, and to prepare the appropriate documents for each contribution.
57. In regard to the apparent non-compliance regarding the additional CCD contribution of \$600, the licensee has stated that it has no particular explanation for it. It did,

however, indicate that it would submit to the Commission by no later than 31 August 2019 a detailed budget specifically addressing CCD-related issues.

58. At the public hearing, the licensee confirmed that it had not made any CCD contributions for the 2018-2019 broadcast year given that a public hearing was to be held. It noted that the payment of the CCD contribution shortfall would be made through proceeds from the sale of its two radio stations, CIMM-FM Ucluelet and CHMZ-FM Tofino.<sup>2</sup>

#### **Commission's analysis and decision**

59. It is important that radio station licensees respect their required CCD contributions obligations, given that CCD initiatives help to develop and advance the careers of young artists while increasing the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. Licensees that do not make their CCD contributions can therefore cause harm to the Canadian broadcasting system.
60. CKPM-FM's broadcasting licence was granted as part of a competitive process. In making its decision to grant a licence, the Commission took into account the quality of the applications. The additional CCD contributions were one of the important factors that led the Commission to grant a licence to CKPM-FM Radio. Although the licensee made the required CCD contributions for the first two years of operation, it has failed to make any contributions during the current licence term.
61. In regard to the over-and-above CCD contribution of \$600, the Commission notes that this was imposed following the licensee's non-compliance with the music programming requirements during the previous licence term. At that time, the Commission considered that \$600 was an appropriate amount based on the station's annual revenues.
62. The Commission considers that the failure to respect a corrective measure that it had imposed indicates that the licensee is not determined to ensure the station's compliance.
63. The CCD contribution shortfall for the current licence term amounts to \$30,384. The non-compliance is serious in nature, especially in light of the circumstances under which the CCD contributions were imposed.
64. In light of the above, the Commission finds the licensee in non-compliance with conditions of licence 2 and 3 set out in the appendix to Broadcasting Decision 2015-372.

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<sup>2</sup> See Broadcasting Notice of Consultation 2019-303, Item 6.

### **Broadcast of content subcategories 33 and 34 musical selections**

65. Condition of licence 5 set out in Broadcasting Decision 2015-372 requires the licensee to devote, each broadcast week, at least 25% of its musical selections to selections from content subcategories 34 (Jazz and Blues) and 33 (World Beat and International) broadcast in their entirety.
66. During the 15 to 21 October 2017 broadcast week, the station devoted 16.3% of the musical selections broadcast to selections drawn from content subcategories 33 and 34.
67. The licensee indicated that this non-compliance was due to a different interpretation of the characteristics of content category 2 and 3 musical selections. It added that each musical selection in the station's library would be evaluated based on the Commission's list with the assistance of the Commission.
68. For the preceding licence term, the Commission found the licensee in non-compliance with that same condition of licence. At that time, the licensee stated that its music director would search for blues, jazz and world beat musical selections in a compatible format and that it had hired a music expert to host a weekly three hours musical program.
69. At the public hearing, the licensee indicated that the music expert was still working at the station when the station went off the air. The licensee also submitted that it was difficult to objectively classify musical selections as belonging to content subcategories 33 and 34, but that it thought that it had figured out content subcategory 33.

### **Commission's analysis and decision**

70. As noted above, when the Commission granted the licensee a broadcasting licence in 2008, it considered the quality of applications in determining which applicant would be granted a licence. As a result, in Broadcasting Decision 2008-117, the Commission noted the musical diversity proposed by the licensee and imposed a condition of licence relating to the broadcast of content drawn from subcategories 33 and 34.
71. Although there was a marked improvement in the level of content drawn from content subcategories 33 and 34 since the station's last licence renewal, the percentage still falls below the required 25%. For a second consecutive licence term, the licensee is not in compliance with this condition of licence. This non-compliance is not only recurrent but also very serious.
72. In light of the above, the Commission finds the licensee in non-compliance with condition of licence 5 set out in the appendix to Broadcasting Decision 2015-372.

## **Local programming**

73. In a letter dated 5 November 2018, the Commission noted that, during the 15 to 21 October 2017 broadcast week, the station broadcast approximately 30 minutes of spoken-word programming during the 63 hours monitored.
74. In that same letter, the Commission also expressed concerns regarding the accuracy of the spoken-word segments. Specifically, in nearly half of the segments, there were no dates or specific information to identify the day of the week or locations. For example, for the weather reports, the dates of the forecasts were not always mentioned or, given the fact that some weather reports were rebroadcast, the reports sometimes mentioned the wrong dates. In addition, the traffic reports often announced that there was heavy traffic in the usual spots, without clearly identifying specific locations.
75. In reply to the above-mentioned letter, the licensee indicated that CKPM-FM operates with limited staff and that the station occasionally uses voice-tracking. It noted that the voice tracks are a fairly generic approach that allows recordings to sound appropriate at the time of broadcast, but that poor planning and management of these tracks contributed to the errors identified by the Commission.
76. In a letter dated 14 May 2019, the Commission gave the licensee the opportunity to specify the measures it had taken, or was planning to take, should the station's licence be renewed, in order to better manage the use of voice-tracking. In its reply, the licensee indicated that the programming and automation equipment was obsolete, and that it planned to upgrade all broadcast systems by 31 August 2020, should the licence be renewed.
77. At the public hearing, the Commission reminded the licensee of its commitment made during the 2008 competitive process to broadcast 14 hours and 32 minutes of spoken-word programming per broadcast week, but also noted that it only broadcast 30 minutes during the week monitored in 2017. When asked about this significant reduction, the licensee indicated that it was economically impossible to maintain the staff necessary to reach the planned level.
78. Finally, the licensee specified that for the local programming to be sufficient and relevant for the community of Port Moody, it would need sufficient human resources. It indicated that it would be able to achieve this objective by selling two of its stations, CIMM-FM Ucluelet and CHMZ-FM Tofino.

## **Commission's analysis and decision**

79. According to the Commission's definition of local programming, set out in paragraph 207 of Broadcasting Public Notice 2006-158, "[i]n their local programming, licensees must incorporate spoken word material of direct and particular relevance to the community served." In addition, as set out in section 3(1)(g) of the Act, the programming originated by broadcasting undertakings should be of high standard,

and as set out in section 3(1)(h), all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast.

80. The Commission reminds the licensee that its commitments particularly regarding local programming and its viable business plan contributed to it being granted a broadcasting licence during a competitive process.
81. The Commission has concerns regarding the licensee's lack of respect towards its own commitments regarding spoken word programming. It considers that the difference between the level of spoken-word programming proposed in 2008 and the level achieved during the broadcast week monitored is very significant.
82. The results of the monitoring evaluation in 2018 show that the station provided inaccurate weather and local traffic reports to the community. In the Commission's view, these reports must allow the audience to access information that is useful, relevant, and available in a timely manner. It also considers that the programming segments broadcast did not meet the above-mentioned local programming definition. It also considers that the local news and weather reports can have an impact on public safety and that providing incorrect information could potentially endanger listeners.
83. Although the level of spoken-word content proposed in the programming plan filed by the licensee is less than the level proposed in 2008, the Commission considers that the plan is adequate. Nevertheless, the broadcast of quality spoken-word programming should have been a priority ever since the station's launch, especially because the licence was granted as part of a competitive process. Finally, given the licensee's history, the Commission is not convinced that the licensee would meet the level it has committed to achieve.
84. In light of the above, the Commission is not convinced that the licensee would offer spoken-word programming of a quality that would meet the community's needs and interests.

### **Regulatory measures**

85. 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 leading to the non-compliance, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.
86. The Commission considers that the responses provided by the licensee during the current licence term and during the present licence renewal process raise concerns over its credibility, its commitment to its regulatory obligations, and its willingness to bring the station into compliance in the future. The Commission is not convinced that the licensee would assume its broadcasting responsibilities and respect the Commission's authority should the station's licence be renewed.

87. On different occasions, the licensee cited the lack of funds as an explanation of its apparent non-compliance. While the Commission acknowledges that a licensee's financial capacity can have an impact on the operation of a station, licensees must comply at all times with the requirements set out in the Act, the Regulations, and their conditions of licence. In the present case, the licensee is in non-compliance not only with conditions of licence requiring the payment of CCD contributions, but also with requirements that do not require substantive funds, such as responding to Commission requests for information, and broadcasting the required levels of Canadian content and of music selections drawn from content subcategories 33 and 34.
88. In response to various Commission letters, the licensee failed to provide, in the Commission's view, any convincing measures that would ensure its compliance in the future. At the public hearing, it stated that it was relying on the renewal of CKPM-FM's licence and the sale of its stations in Tofino and Ucluelet to ensure the Port Moody station's compliance. It also admitted that it did not take concrete measures, such as the investment in a new operating system or the payment of CCD contributions, because of the uncertainty surrounding CKPM-FM's licence renewal and the fact that it was called to a public hearing.
89. Given that holding a broadcasting licence is a privilege, broadcasters are required to adhere at all times to a number of regulations and conditions of licence in order to operate a radio station. The Commission considers that being called to a public hearing does not justify a failure to respect these regulations and conditions. In fact, a hearing is an additional opportunity for a licensee to explain the measures taken to ensure compliance and to provide reasons why its licence should be renewed. Under the same circumstances, a responsible licensee would have understood the seriousness of the situation and the Commission's warnings, and would have taken all the necessary steps to correct the situation as quickly as possible. In the present case, the Commission considers that the licensee failed to provide compelling measures to rectify the station's non-compliance and did not take the opportunity of the public hearing to explain why its licence should be renewed.
90. In addition, the Commission considers that the fact that the station is off-air is a very serious matter, since the station is not contributing to the achievement of the objectives set out in the Act and is not providing any service to the residents of the community that it is licensed to serve.
91. Moreover, the Commission is not convinced that CKPM-FM, while it was on the air, provided quality programming to the community it was licensed to serve, contrary to the requirement set out in section 3(1)(g) of the Act.
92. As noted above, the licensee was granted a licence as part of a competitive process. The Commission granted the licence to the licensee in light of the commitments it made at that time, in particular those relating to the levels of spoken-word programming and specialty music broadcast, and to CCD contributions. During the current licence term, the licensee was not only in non-compliance with several basic

regulatory requirements, but it also failed to adhere to several commitments that it made in 2008.

## Conclusion

93. The instances of non-compliance relating to CCD contributions, radio monitoring materials, music programming requirements, ownership information requirements and requests for information from the Commission are serious and, in some cases, recurring. The Commission notes that the non-compliance in the current licence term, as well as the non-compliance in the preceding licence term, are not isolated incidents: they appear to be part of a pattern of behaviour on the part of the licensee that continued, and even grew worse, over the course of two consecutive licence terms.
94. The Commission is not convinced that a change in the licensee's behaviour regarding its regulatory obligations will occur.
95. Further, given that the station has been off the air for several months, the Commission considers that renewing the broadcasting licence for CKPM-FM's would not result in an appropriate use of one of the last known frequencies in the market.
96. The Commission has considered all of the regulatory measures available to it to ensure that the licensee adheres to its obligations, including the imposition of conditions of licence, the issuance of mandatory orders, the granting of a short-term renewal, and the suspension of CKPM-FM's broadcasting licence.
97. Given the severity and recurrence of the current instances of non-compliance; the station's history and the licensee's actions, which clearly demonstrate its poor understanding of its conditions of licence and regulatory obligations, or a lack of willingness to respect them; the licensee's demonstrated inability to implement the necessary measures to ensure compliance; and its disregard for the Commission's authority and for its responsibilities as a broadcaster, the Commission is not convinced that the imposition of conditions of licence, the imposition of a mandatory order, a suspension of the licence or a short-term licence would be effective measures. Consequently, the Commission finds that not renewing the licence is the only appropriate measure in the circumstances.
98. In light of all of the above, the Commission **denies** the application by CKPM-FM Radio Ltd. to renew the broadcasting licence for the English-language commercial radio programming undertaking CKPM-FM Port Moody, British Columbia. Accordingly, the licence will expire on 31 March 2020.

Secretary General

## Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2019-303, 28 August 2019

- *Various commercial radio programming undertakings – Administrative renewals*, Broadcasting Decision CRTC 2019-256, 16 July 2019
- *CKPM-FM Port Moody – Licence renewal*, Broadcasting Decision CRTC 2015-372, 13 August 2015
- *Update on the Commission’s approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Licensing of new radio stations to serve the Vancouver radio market*, Broadcasting Decision CRTC 2008-117, 30 May 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006