



Broadcasting Decision CRTC 2006-353

Ottawa, 10 August 2006

Radio Express inc.

Salaberry-de-Valleyfield, Quebec

Application 2006-0154-3

Public Hearing in Québec, Quebec

20 March 2006

CKOD-FM Salaberry-de-Valleyfield – Licence renewal and issuance of mandatory orders

The Commission renews the broadcasting licence for the French-language commercial radio programming undertaking CKOD-FM Salaberry-de-Valleyfield from 1 September 2006 to 31 May 2007. This short-term renewal will allow the licensee to explore the means available to correct the deplorable situation noted by the Commission regarding the ability of the current licensee and of its controlling shareholder to operate the station.

In addition, the Commission issues mandatory orders directing the licensee to comply at all times with the requirements set out in sections 2.2(5), 8(6) and 9(2) of the Radio Regulations, 1986 regarding the broadcast of French-language music and the submission of logger tapes and annual reports, and to comply with its condition of licence concerning contributions to Canadian talent development.

The application

1. The Commission, following repeated requests, finally received an application from Radio Express inc. (Radio Express) for the renewal of the broadcasting licence for the French-language radio programming undertaking CKOD-FM Salaberry-de-Valleyfield, expiring 31 August 2006.
2. On 14 February 2006, the Commission issued Broadcasting Notice of Public Hearing CRTC 2006-2-3 (Notice of Public Hearing 2006-2-3) noting the licensee's apparent non-compliance with the provisions of the *Radio Regulations, 1986* (the Regulations) with respect to the provision of logger tapes and annual reports, and contributions to Canadian talent development (CTD). In Broadcasting Public Notice CRTC 2006-2-5, 28 February 2006, the Commission noted the licensee's apparent non-compliance with provisions of the Regulations concerning the broadcast of French-language vocal music.
3. The Commission further noted in Notice of Public Hearing 2006-2-3 that the licensee failed to demonstrate that it had met its commitment regarding the provision of the tangible benefits proposed at the time of the change in the control of the licensee

approved by the Commission in Letter of Authority A99-0120 dated 7 September 1999, and announced in *Radio Express inc.*, Public Notice CRTC 1999-153, 14 September 1999.

4. The Commission also stated its expectation that the licensee show cause at the hearing why a new mandatory order should not be issued for the licensee to comply with the requirement of the Regulations concerning the provision of logger tapes and annual reports and its condition of licence regarding CTD contributions. The Commission added that it expected the licensee to demonstrate at the hearing why the Commission should not suspend, revoke or refuse to renew the licence under sections 24 and 9, respectively, of the *Broadcasting Act* (the Act).

Interventions

5. The Commission received one intervention in support of this application, and a letter of complaint from the station's employees concerning payment delays and non-payment of their wages.
6. The licensee did not reply to the intervention and did not comment on the complaint.

Commission's analysis and determination

7. The Commission notes that Robert Brunet, the president of Radio Express, stated at the public hearing held as part of the previous renewal proceeding that his background was in the concrete industry, that he was inexperienced in broadcasting, and that he was trying to do things properly.
8. After noting that the licensee had failed to comply with provisions of the Regulations concerning the submission of logger tapes and annual reports, and its failure to comply with the condition of licence requiring payment of CTD contributions, the Commission renewed CKOD-FM's licence for 18 months. The Commission also issued a mandatory order pursuant to section 12(2) of the Act directing the licensee to comply with the requirements of the Regulations concerning the submission of annual reports. The Commission further noted that it would consider recourse to additional measures, including suspension, non-renewal or revocation of the licence in the event of any future non-compliance with the Regulations or with the licensee's conditions of licence.
9. The Commission considers that, under the same circumstances, a responsible licensee would have understood the seriousness of its situation and the Commission's warning, seized the opportunity to rectify the situation, and taken all necessary means to do so.
10. However, the licensee has taken the completely opposite course, committing one act of non-compliance after another. Not only has the licensee again breached the Regulations concerning the submission of annual reports and logger tapes, it has breached the Regulations regarding the broadcast of French-language vocal music. Moreover, only shortly before its appearance at the 20 March 2006 Public Hearing, the licensee

continued to default on its condition of licence obligations for contributions to CTD. The licensee's non-compliance with requirements concerning logger tapes and French-language vocal music was confirmed in an analysis of CKOD-FM's programming broadcast during the week of 29 May to 4 June 2005.

11. The Commission noted the licensee's statement at the public hearing that it had altered the effective control of Radio Express in 2004, without the Commission's prior approval. This constitutes an infraction of section 11(4)a) of the Regulations, which stipulates that the licensee "shall obtain the prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in... a change by whatever means of the effective control of its undertaking". On 3 May 2006, in response to a direction from the Commission at the public hearing, the licensee filed an application with a view to correcting this matter.
12. The Commission further notes that, during a 17 June 2005 inspection, the Department of Industry (the Department) found four technical anomalies in the operation of CKOD-FM. The Department confirmed in a second inspection on 31 March 2006 that these anomalies had been remedied.
13. The licensee's explanations for these various deficiencies, as provided under oath at the public hearing, were not convincing and offered insufficient excuse for such conduct. Accordingly, the Commission finds that the licensee has failed to meet its obligations as set out in Notice of Public Hearing 2006-2-3, as amended.
14. Furthermore, the licensee's proposed measures for remedying the situation, which were discussed at the public hearing, seem to have been improvised in haste and at the last minute, leaving the Commission unconvinced as to their effectiveness and the sincerity of the licensee's willingness to implement them, despite the promises made at the hearing by the licensee's controlling shareholder, Mr. Brunet.
15. In the circumstances, the Commission has serious doubts as to the licensee's ability to put its house in order and, generally, to operate its station responsibly and fulfil its regulatory obligations and conditions of licence, so long as it remains under the ownership, control and operation of Radio Express and its controlling shareholder, Mr. Brunet.
16. The Commission therefore considers it appropriate to grant only a very short renewal of nine months. Accordingly, the Commission **renews** the broadcasting licence of French-language commercial radio programming undertaking CKOD-FM Salaberry-de-Valleyfield from 1 September 2006 to 31 May 2007. The Commission expects the licensee to use this licence term to explore the means available to correct the deplorable situation noted by the Commission, taking into account the Commission's very serious concerns expressed above as to the ability of the current licensee and of its controlling shareholder, Mr. Brunet, to operate the station.

17. The licence will be subject to the **conditions** set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, and to the **conditions** set out in Appendix I to this decision.
18. In light of the licensee's repeated infractions, the Commission also considers it appropriate to issue mandatory orders pursuant to section 12(2) of the Act requiring the licensee to comply at all times during the new licence term with the provisions of sections 2.2(5), 8(6) and 9(2) of the Regulations concerning the broadcast of French-language vocal music and the submission of logger tapes and annual reports, and to comply with the condition of licence concerning contributions to CTD. Consistent with section 13 of the Act, Broadcasting Mandatory Orders CRTC 2006-1, 2006-2, 2006-3 and 2006-4 set out in the appendices to this decision will be filed immediately with the Federal Court and become orders of the Federal Court. Failure to comply with Federal Court orders may result in contempt of court charges.
19. The Commission notes that it may consider recourse to additional measures, including suspension, non-renewal or revocation of the licence, if CKOD-FM again breaches the Regulations or any of its conditions of licence.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix I to Broadcasting Decision CRTC 2006-353

Conditions of licence

1. The licence is subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, with the exception of condition number 5.
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*, in any broadcast week:
 - a) devote 55% or more of its musical selections in that broadcast week from content category 2 to Canadian selections broadcast in their entirety; and
 - b) between 6 a.m. and 6 p.m., in the period beginning on Monday of that week and ending on Friday of the same broadcast week, devote 55% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

For the purposes of this condition, the terms “broadcast week,” “Canadian musical selection” and “musical selection” shall have the meaning set out in the *Radio Regulations, 1986*. The term “category” shall have the same meaning as “content category” set out in the same Regulations.

3. The licensee shall make an annual payment of \$400 to third parties involved in Canadian talent development (CTD), which is the level identified for the station in the Canadian Association of Broadcasters’ (CAB) *Distribution Guidelines for Canadian Talent Development*, as set out in *Contributions by radio stations to Canadian talent development — A new approach*, Public Notice CRTC 1995-196, 17 November 1995, as amended from time to time and approved by the Commission; the licensee shall report the names of the third parties associated with CTD, together with the amounts paid to each, concurrently with its annual return.

Appendix II to Broadcasting Decision CRTC 2006-353

Broadcasting Mandatory Order CRTC 2006-1

Radio Express inc., licensee for CKOD-FM Salaberry-de-Valleyfield, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CKOD-FM Salaberry-de-Valleyfield – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2006-353, 10 August 2006, with the requirement contained in subsection 2.2(5) of the *Radio Regulations, 1986*, which reads as follows:

Except as otherwise provided under a licensee's condition of licence, an A.M. or F.M. licensee licensed to operate a campus station, commercial station or community station in the French language shall, in a broadcast week, devote 65% or more of its vocal musical selections from content category 2 to musical selections in the French language broadcast in their entirety.

Appendix III to Broadcasting Decision CRTC 2006-353

Broadcasting Mandatory Order CRTC 2006-2

Radio Express inc., licensee for CKOD-FM Salaberry-de-Valleyfield, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CKOD-FM Salaberry-de-Valleyfield – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2006-353, 10 August 2006, with the requirement contained in subsection 8(6) of the *Radio Regulations, 1986*, which reads as follows:

Where, before the expiry of the applicable period referred to in subsection (5), the Commission requests from the licensee a clear and intelligible tape recording or other exact copy of matter broadcast, the licensee shall furnish it to the Commission forthwith.

Appendix IV to Broadcasting Decision CRTC 2006-353

Broadcasting Mandatory Order CRTC 2006-3

Radio Express inc., licensee for CKOD-FM Salaberry-de-Valleyfield, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CKOD-FM Salaberry-de-Valleyfield – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2006-353, 10 August 2006, with the requirement contained in subsection 9(2) of the *Radio Regulations, 1986*, which reads as follows:

On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous August 31.

Appendix V to Broadcasting Decision CRTC 2006-353

Broadcasting Mandatory Order CRTC 2006-4

Radio Express inc., licensee for CKOD-FM Salaberry-de-Valleyfield, is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to comply at all times within the term of the licence granted in *CKOD-FM Salaberry-de-Valleyfield – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2006-353, 10 August 2006, with the requirement contained in the following condition of licence:

The licensee shall make an annual payment of \$400 to third parties involved in Canadian talent development, which is the level identified for the station in the Canadian Association of Broadcasters' *Distribution Guidelines for Canadian Talent Development*, as set out in *Contributions by radio stations to Canadian talent development — A new approach*, Public Notice CRTC 1995-196, 17 November 1995, as amended from time to time and approved by the Commission; the licensee shall report the names of the third parties associated with Canadian talent development, together with the amounts paid to each, concurrently with its annual return.