



Broadcasting Decision CRTC 2006-320

Ottawa, 2 August 2006

Radio MF Charlevoix inc.

Saint-Hilarion, La Malbaie, Baie-Saint-Paul, Petite-Rivière-Saint-François and Saint-Siméon, Quebec

Application 2005-0333-5

Broadcasting Public Notice CRTC 2006-35

29 March 2006

CIHO-FM Saint-Hilarion and its transmitters CIHO-FM-1 La Malbaie, CIHO-FM-2 Baie-Saint-Paul, CIHO-FM-3 Petite-Rivière-Saint-François and CIHO-FM-4 Saint-Siméon – Licence renewal

The Commission renews the broadcasting licence for the French-language commercial radio programming undertaking CIHO-FM and its transmitters from 1 September 2006 to 31 August 2009.

The application

1. The Commission received an application by Radio MF Charlevoix inc. (Radio MF) to renew the broadcasting licence of the French-language commercial radio programming undertaking CIHO-FM Saint-Hilarion and its transmitters CIHO-FM-1 La Malbaie, CIHO-FM-2 Baie-Saint-Paul, CIHO-FM-3 Petite-Rivière-Saint-François and CIHO-FM-4 Saint-Siméon. The licence expires on 31 August 2006.¹

Background

2. In Broadcasting Public Notice CRTC 2005-65, 5 July 2005 (Public Notice 2005-65), the Commission indicated that it would examine the application to renew the licence of CIHO-FM Saint-Hilarion and its transmitters. In this public notice, the Commission noted Radio MF's history of non-compliance for the years 1989 to 1996 as well as Radio MF's current failure to comply with its condition of licence for the broadcasting of category 3 (Special Interest Music) music.
3. An intervention submitted by the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) pointed out, for example, that the station had made no financial contribution to Canadian talent development (CTD) for the years 1998 to 2005. The concerns raised in this intervention are discussed later in this decision.

¹ In *Administrative renewal*, Broadcasting Decision CRTC 2005-438, 29 August 2005, the licence for this undertaking was renewed from 1 September 2005 to 28 February 2006, and in *Administrative renewal*, Broadcasting Decision CRTC 2006-43, 14 February 2006, the licence was renewed from 1 March 2006 to 31 August 2006.

4. A more thorough review by the Commission revealed other anomalies involving certain conditions of CIHO-FM's licence. Accordingly, in a letter to the licensee, the Commission emphasized the differences between CIHO-FM's current licence and *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998 (Commercial Radio Policy), and the following anomalies:

- the refusal by the Department of Industry (the Department) to grant a broadcasting certificate for the Saint-Siméon transmitter (CIHO-FM-4). The Commission reminded Radio MF that the approval granted in *CIHO-FM Saint-Hilarion – New transmitters in Petite-Rivière-Saint-François and Saint-Siméon*, Broadcasting Decision CRTC 2003-459, 12 September 2003 (Decision 2003-459), would only be effective when the Department issued a broadcasting certificate for this transmitter;
- Radio MF's failure to submit CIHO-FM's annual report for the year 2002 to the Commission despite its obligation under the provisions of section 9(2) of the *Radio Regulations, 1986* (the Regulations), which states:

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.

5. In a letter dated 6 March 2006, Radio MF stated that it was surprised to learn that the Saint-Siméon transmitter did not meet the Department's requirements and indicated that its engineer would be contacting the Department to sort out the situation. Though Radio MF did not mention this in its letter, it appended CIHO-FM's audited financial statements for the year 2002 to its letter to the Commission.
6. On 21 March 2006, Radio MF submitted a second letter to the Commission in which it confirmed that it did not want to adhere to the customary condition of licence related to CTD.
7. The Commission notes that CIHO-FM has never been subject to a condition of licence requiring it to make financial contributions to CTD.
8. On 29 March 2006, the Commission published Broadcasting Public Notice CRTC 2006-35 (Public Notice 2006-35) in which it indicated that "the licensee is currently subject to conditions of licence that were not examined in the light of the *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998, at its last licence renewal"² and that, "in view of the 1998 Policy, Radio MF Charlevoix inc. requests renewal under the terms and conditions set out in Decision 1998-389, amended as follows:

² See *Licence renewal for CIHO-FM and its transmitters*, Decision CRTC 98-389, 28 August 1998.

- delete the condition of licence limiting the broadcast of advertising to 9 minutes per hour;
- delete the condition of licence requiring that at least 35% English-language vocal music be broadcast;
- replace the condition of licence requiring that 3 hours of category 3 (Special Interest Music) musical programming be broadcast with a condition of licence requiring the broadcast of at least 5% category 3 musical selections in each broadcast week;
- amend the condition of licence requiring the broadcast of at least 15% spoken word by inserting the words ‘community-oriented [...] in each broadcast week.’”

9. The Commission notes that Public Notice 2006-35 did not mention Radio MF’s application to amend its condition of licence with regard to CTD.

Interventions

10. The Commission received an intervention supporting this licence renewal application as well as a comment by ADISQ in response to the publication of Public Notice 2005-65. ADISQ offered general comments about the streamlined process explained by the Commission in *The CRTC Streamlines Radio Renewals Process*, Broadcasting Circular CRTC 2002-448, 7 June 2002 (Circular 2002-448).

11. ADISQ stated that it was not opposed in principle to the streamlined process adopted by the Commission for renewal applications that do not raise any significant concerns, but it was concerned about the use of the streamlined process for this application. ADISQ submitted that there were not enough evaluations of the station’s compliance, nor was there enough information on the public record for it to determine whether or not to support the licence renewal for a seven-year term. In this case, ADISQ pointed out that, although Radio MF has not used a short-form application, it cannot evaluate this licensee’s performance owing to the absence or scarcity of measurement statistics placed on the public record of this application. ADISQ asked that the Commission hold a full public proceeding on the CIHO-FM renewal application, and, as a condition of eligibility for future streamlined renewal processes, that the Commission require that CIHO-FM submit to the Commission:

- annual compliance reports for Canadian content and French-language vocal music;
- a report demonstrating that the station provides access to the airwaves to French-language Canadian artists and offers a variety of their musical selections; and
- a separate compliance report on CTD contributions, to be placed on the public record.

12. ADISQ also maintained that CIHO-FM’s licence should be subject to a full renewal

process given that Radio MF's public record includes only one study of the station's performance with regard to its obligations to broadcast Canadian content and French-language vocal music. According to ADISQ, current technological resources could certainly allow the Commission to conduct much more frequent evaluations of this licensee's programming without requiring additional resources. ADISQ further pointed to the absence of information regarding CIHO-FM's compliance with the requirements of the Commission's Commercial Radio Policy with regard to CTD. In ADISQ's opinion, the fragmentary nature or absence of measurements such as performance studies and compliance reports on CIHO-FM's public record make it impossible to verify whether the licensee in question has met the objectives of the *Broadcasting Act* (the Act), the regulatory requirements or the specific conditions of its licence.

13. Moreover, ADISQ found it deplorable that, during its last licence term, CIHO-FM was in violation of its condition of licence regarding category 3 music. Indeed, the result of the sole evaluation to which Radio MF was subject, the one for the week of 6 to 12 April 2003, revealed that the station broadcast only one hour of category 3 music, whereas its condition of licence stipulates that it must broadcast a minimum of three hours a week of this kind of programming. ADISQ expressed its surprise at the fact that, despite Radio MF's abundant history of non-compliance noted by the Commission in Public Notice 2005-65, the Commission conducted only one evaluation of this station's programming during the last licence term of seven years.
14. ADISQ also remarked that Radio MF's public record contains no information about its compliance with its obligations to CTD despite a condition of licence that obliges Radio MF to pay annual contributions to third-party organizations involved in CTD in proportion to its market share, or \$400. ADISQ noted that this apparent violation does not appear either on this station's public record or in Public Notice 2005-65. ADISQ therefore asked the Commission, if it confirms this apparent violation, to require the payment of these contributions to MusicAction retroactively.

Radio MF's reply

15. Radio MF pointed out that the Commission indicated, in *Licence renewal for CIHO-FM and its transmitters*, Decision CRTC 98-389, 28 August 1998 (Decision 98-389), that "while CIHO-FM is licensed as an independent FM broadcasting undertaking, it is essentially a community-owned and community-oriented station." Accordingly, Radio MF was of the view that it was not liable to pay annual contributions to third-party organizations involved in CTD and thus was not in violation in any of the last seven years of its licence.
16. In response to ADISQ's question about the broadcast of Canadian category 2 (Popular Music) musical selections, Radio MF stated that CIHO-FM must broadcast, by condition of licence, at least 40% Canadian category 2 musical selections in each broadcast week, a percentage that exceeds the percentage established by the Commission in the Regulations.

Commission's analysis and determination

17. The Commission notes ADISQ's comments regarding the streamlined renewal process for radio licences. The Commission stated in Circular 2002-448 that the streamlining initiatives it has adopted in recent years in order to lighten the regulatory burden have assisted the licensees of broadcasting undertakings and have allowed the Commission to direct its limited resources to priority sectors.
18. The Commission addressed ADISQ's concerns in a number of renewal decisions issued previously. In particular, the Commission stated that, while it had adopted a streamlined process, it would continue to carry out its supervisory role, particularly through the compliance monitoring of radio stations. Such monitoring activities include checking logger tapes, playlists, logs and a sampling of the programming broadcast by the stations. The Commission also considers all complaints filed, as well as any negative rulings issued by the Canadian Broadcast Standards Council.
19. The Commission also assesses the information contained in the annual reports filed by the licensees concerning CTD initiatives and examines the performance of the licensees with respect to their individual commitments or conditions of licence, as specified in previous renewal and other decisions.
20. With respect to ADISQ's comment about the shortage of information or evaluations of the station's compliance, the Commission stresses that programming compliance reports are placed on the licensee's public record, and that CTD commitments are available on the Commission's Web site.
21. Moreover, the Commission also notes that the technological resources that might facilitate the evaluation of licensees' programming are currently available. The Commission therefore urges ADISQ to explore the potential of these technological resources that would allow it to assess the compliance of licensees.
22. The Commission considers that the inclusion in reports of the names of third parties receiving CTD contributions is unnecessary. The Commission audits these contributions to ensure that each one qualifies, as prescribed in *An FM policy for the nineties*, Public Notice CRTC 1990-111, 17 December 1990, and in *Contributions by radio stations to Canadian talent development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995. These measures permit the production of a summary report on contributions to CTD. Accordingly, the Commission considers that imposing the production of additional reports as ADISQ suggests would only increase the broadcasters' administrative burden.
23. The Commission further wishes to stress that it conducted a study of the programming broadcast by CIHO-FM during the current licence term. After checking logger tapes and playlists for the week of 6 to 12 April 2003, the Commission finds that a single hour of category 3 music was broadcast for the week in question instead of the three hours required by CIHO-FM's condition of licence.

24. The Commission notes that Radio MF proposed to amend its condition of licence regarding the broadcast of category 3 musical programming. The Commission generally does not approve an application to amend a condition of licence when this condition has not been met during the last licence term. Nevertheless, given that the proposed amendment will bring about an increase in the number of hours of category 2 music that must be broadcast in each broadcast week, the Commission **approves** the application by Radio MF Charlevoix inc. to amend its condition of licence with regard to the broadcast of category 3 musical programming.
25. Radio MF also proposed to delete the condition of licence related to the number of hours of advertising that can be broadcast. Under the Commercial Radio Policy, the Commission no longer imposes limits on the number of hours of advertising that can be broadcast by commercial radio stations. Accordingly, the Commission **approves** the application by Radio MF Charlevoix inc. to delete the condition of licence related to the number of hours of advertising that can be broadcast by CIHO-FM.
26. With regard to the Department's refusal to issue a broadcasting certificate for the Saint-Siméon transmitter, it should be noted that, since the publication of Public Notice 2006-35, the Department has advised the Commission that the Saint-Siméon transmitter now meets the requirements of the *Radiocommunication Act*.
27. With respect to Radio MF's failure to submit its annual report for the year 2002, and although this alleged violation was not raised in Public Notice 2006-35, the Commission notes that the licensee submitted CIHO-FM's annual report for 2002 following the publication of this notice.
28. Radio MF's licence is subject to a condition of licence that requires it to broadcast at least 35% English-language vocal music. Given that this station holds a French-language commercial radio licence, the Commission considers it unnecessary to renew this condition of licence. Accordingly, the Commission **approves** the application by Radio MF to delete the condition of licence concerning the broadcast of English-language vocal music.
29. The Commission stresses the special nature of this station as a station that holds a commercial licence with a community mandate. This quality is mentioned in the Commission's earlier decisions that cover the commercial elements and those reflecting the station's community orientation. However, the Commission stipulates that, since the station holds a commercial radio licence, CIHO-FM must comply with the requirements of the Regulations and the Commercial Radio Policy.

30. The Commission considers that it would now be reasonable for the station to be subject to the condition of licence related to CTD that is generally imposed on commercial radio stations and that stipulates that “all licensees of private commercial radio stations are asked to make an annual financial commitment to Canadian talent development.” In CIHO-FM’s case, the annual contributions to be paid to the Canadian Association of Broadcasters’ CTD Plan would be in the order of \$400.
31. With respect to the application to amend the condition of licence related to the broadcast of spoken word programming to specify that such programming consist of “community-oriented” programming, the Commission emphasizes that commercial radio stations have no regulatory requirement for the weekly broadcast of spoken word programming. However, given that the proposed amendment relates to a matter that would be consistent with CIHO-FM’s specific mandate as a commercially-owned and -oriented station, the Commission **approves** the application for an amendment related to the broadcast of spoken word programming. The licence will therefore be subject to the amended condition of licence as stated at paragraph 34 of this decision.
32. Finally, the current violations of the Regulations and the condition of licence related to category 3 music represent a first-time instance non-compliance for this licensee. In the circumstances, in accordance with *Practices regarding radio non-compliance*, Circular No. 444, 7 May 2001, the licensee would normally be granted a four-year licence renewal. The Commission notes, however, that CIHO-FM has already been granted two consecutive administrative renewals for a total of one year.
33. Accordingly, the Commission **renews** the broadcasting licence for the French-language commercial radio undertaking CIHO-FM Saint-Hilarion and its transmitters CIHO-FM-1 La Malbaie, CIHO-FM-2 Baie-Saint-Paul, CIHO-FM-3 Petite-Rivière-Saint-François and CIHO-FM-4 Saint-Siméon for a period of three years, from 1 September 2006 to 31 August 2009.
34. 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, as well as to the following **conditions**:
- The licensee shall devote, in each broadcast week, at least 5% of its musical selections to content category 3 (Special Interest Music) musical selections, at least 15% of which will be devoted to Canadian musical selections scheduled in a reasonable manner throughout each broadcast day.
 - The licensee shall broadcast at least 15% community-oriented spoken word programming in each broadcast week.
 - The licensee shall devote, in each broadcast week, at least 40% of its content category 2 (Popular music) musical selections to Canadian selections broadcast in their entirety.

Employment equity

35. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

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>