



## Broadcasting Decision CRTC 2005-49

Ottawa, 10 February 2005

**Radio Express inc.**  
Valleyfield, Quebec

*Application 2002-0923-0  
Public Hearing in the National Capital Region  
7 September 2004*

### **CKOD-FM Valleyfield – Licence renewal and issuance of a mandatory order**

*The Commission **renews** the broadcasting licence for the radio programming undertaking CKOD-FM Valleyfield from 1 March 2005 to 31 August 2006. This short-term renewal will allow the Commission to review, at an early date, the licensee's compliance with the provisions of the Radio Regulations, 1986 (the Regulations).*

*In addition, the Commission issues a mandatory order on the submission of annual reports in which it orders the licensee to comply at all times with the requirements set out in section 9(2) of the Regulations.*

### **The application**

1. The Commission received an application by Radio Express inc. (Radio Express) to renew the broadcasting licence for the radio programming undertaking CKOD-FM Valleyfield, which expires on 28 February 2005.

### **Background**

2. On 7 September 1999, the Commission authorized a change in the effective control of Radio Express in Letter of Authority A99-0120 (Letter A99-0120). The change of control was carried out through the sale of the shares owned equally by Jean-Pierre Major and Suzanne Turbide to 9076-4374 Québec inc. As part of this change of control, the purchaser made a commitment to contribute, as part of its benefits package, \$2,880 annually over a five-year period, for a total amount of \$14,400, to Canadian talent development.

3. In *Licence renewal for CKOD-FM*, Decision CRTC 99-537, 8 December 1999 (Decision 99-537), the Commission renewed the licence for CKOD-FM Valleyfield for a period of 44 months, from 1 January 2000 to 31 August 2003<sup>1</sup> even though the licensee was found to be in non-compliance with respect to the level of Canadian content required by condition of licence. In this decision, the Commission imposed conditions of licence requiring the licensee to:
  - broadcast a minimum Canadian content level of 55% for category 2 music;
  - 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, (Public Notice 1995-196) as amended from time to time and approved by the Commission, and to report the names of the third parties associated with Canadian talent development, together with the amounts paid to each, concurrently with its annual return; and
  - maintain the commitment proposed as a benefit in the change of control of CKOD-FM (Letter of Authority A99-0120 dated 7 September 1999) to contribute \$2,880 annually over a five-year period, to Canadian talent development, to be allocated as follows:
    - 3% to a new Canadian music marketing and promotion fund;
    - 2% to FACTOR or MusicAction; and
    - 1% to either of the above initiatives, to other Canadian talent development initiatives, or to other eligible third parties directly involved in the development of Canadian musical and other artistic talent, in accordance with Public Notice 1995-196, as may be amended from time to time.
4. At the time of the licence renewal, the licensee had still not submitted an annual report for the broadcast year ending 31 August 1999.
5. On 9 May 2002, the Commission asked CKOD-FM Valleyfield to submit its logger tapes for the week of 28 April to 4 May 2002. In a letter dated 18 June 2002, the licensee informed the Commission that it was unable to provide the logger tapes for the period requested because of a malfunction of its equipment. On 5 August 2002, the licensee was notified, in writing, of its apparent failure to comply with the provisions of the *Radio Regulations, 1986* (the Regulations), specifically with sections 8(5) and 8(6) of the Regulations, which read as follows:

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<sup>1</sup> The licence term was subsequently extended for administrative reasons. In *Administrative renewals*, Broadcasting Decision CRTC 2003-290, 21 July 2003, the Commission extended the licence term to 29 February 2004; in *Administrative renewal*, Broadcasting Decision CRTC 2004-88, 20 February 2004, the Commission extended the licence term to 31 August 2004; and, finally, in *Administrative renewal*, Broadcasting Decision CRTC 2004-325, 9 August 2004, the Commission further extended the licence term to 28 February 2005.

8(5) A licensee shall retain a clear and intelligible tape recording or other exact copy of all matter broadcast

(a) for four weeks from the date of the broadcast; or

(b) where the Commission receives a complaint from any person regarding the matter broadcast or for any other reason wishes to investigate it and so notifies the licensee before the expiration of the period referred to in paragraph (a), for eight weeks from the date of the broadcast.

8(6) 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.

6. In addition, the licensee did not submit an annual report to the Commission for the current licence period in spite of its requirement to do so under the provisions of section 9(2) of the Regulations, which reads as follows:

9(2) 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.

7. The licensee was notified repeatedly of its requirement to comply with the provisions of section 9(2) of the Regulations.
8. On 10 December 2002, the licensee filed an abridged licence renewal application for CKOD-FM Valleyfield. Following an analysis of the application and of the licensee's file, Commission staff requested that the licensee submit a detailed licence renewal application as well as the missing annual reports. The licensee did not reply to this request.

#### **Notice of public hearing**

9. In Broadcasting Notice of Public Hearing CRTC 2004-5, 7 July 2004 (Notice of Public Hearing 2004-5), the Commission stated that it would consider the CKOD-FM Valleyfield licence renewal application at the 7 September 2004 public hearing in the National Capital Region. Notice of Public Hearing 2004-5 referred to the apparent failure to comply with the provisions of the Regulations related to the licensee's provision of logger tapes and annual reports and stated that the Commission expected the licensee to show cause why a mandatory order should not be issued requiring the licensee to comply with the provisions of the Regulations governing logger tapes and annual reports.

### **The intervention**

10. In its intervention, the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) noted that the licensee's file was incomplete. ADISQ also noted the licensee's failure to reply to the Commission's repeated requests for the information that was missing from its file.
11. ADISQ stated that, without logger tapes, the Commission would be unable to conduct a study of programming performance and, therefore, it would be impossible to verify whether the licensee complied with the Commission's requirements for Canadian content and French-language vocal music. ADISQ also stated that, without the undertaking's annual reports, it would be impossible to verify whether the licensee complied with the requirements of its condition of licence with respect to Canadian talent development and with its payment requirements to third-party organizations involved in Canadian talent development.
12. Accordingly, ADISQ asked the Commission to question the licensee closely to ensure that it understands the requirements and responsibilities inherent to the privilege of having exclusive access to the public airwaves. Specifically, ADISQ asked the licensee to confirm, with supporting evidence, that it has fulfilled the Commission's requirements with respect to Canadian content, French-language vocal music and contributions to Canadian talent development.

### **The public hearing**

#### **Logger tapes**

13. At the 7 September 2004 public hearing, the licensee indicated that the logger tapes were recorded on videocassettes and that the apparent non-compliance related to the provision of logger tapes was due to the malfunction of its equipment. When these problems occurred, the licensee had not yet implemented a videocassette monitoring procedure, which is why all of the videocassettes it had sent to the Commission were blank. The licensee explained that it was only then that it realized that the problem had been going on for some time and that it had since implemented verification procedures.
14. Specifically, the licensee indicated that the station's program director is now responsible for ensuring that the logger tapes are checked by the hosts on a regular basis. The licensee indicated that it did not currently have a back-up system, but that it might be able to purchase one within the next six months.

### **Annual reports**

15. At the public hearing, the licensee submitted the annual report for the broadcast year ending 31 August 2003. The licensee also committed to submit the missing annual reports for the current licence term for the broadcast years ending 31 August 2000, 31 August 2001 and 31 August 2002, by 7 October 2004. The licensee also confirmed that the annual report for the broadcast year ending 31 August 2004 would be submitted by 30 November 2004, as set out in the Regulations.

### **Annual contributions to Canadian talent development**

16. At the hearing, the Commission asked the licensee to verify whether it had complied with its conditions of licence related to contributions to Canadian talent development and to state whether these amounts would be included in the annual reports.
17. The licensee stated that it had paid the annual \$400 contribution to third parties involved in Canadian talent development. It stated that, for three years, the contributions had been made to an organization in the region and, for the past two years, they had been made to another organization. It also confirmed that these contributions would be included in its annual reports.
18. The licensee indicated that it had not fully met its condition of licence requiring an annual contribution, over five years, of \$2,880 for Canadian talent development. The licensee indicated that it had only contributed approximately \$2,000, which is less than it had committed to contribute. It estimated, however, that it would be able to pay the balance of the \$14,400 contribution by the end of the broadcast year, i.e., 31 August 2005.

### **Mandatory order with respect to logger tapes and annual reports**

19. The licensee stated its intention to comply with all of its requirements and submitted that, in light of the clarifications provided at the hearing, it was not necessary for the Commission to issue a mandatory order requiring CKOD-FM Valleyfield to comply with the provisions of the Regulations relating to logger tapes and annual reports. It indicated that it believed that it would soon be able to demonstrate its good faith.

### **The Commission's analysis and determinations**

20. The Commission notes that, because of the licensee's non-compliance with respect to the provision of logger tapes, the Commission was unable to conduct a performance study of CKOD-FM Valleyfield's programming. Consequently, the Commission is unable to confirm whether the licensee has complied with its requirements regarding Canadian content and French-language vocal music.

21. The Commission notes the licensee's intention to purchase equipment within six months to make back-up logger tapes of its programming. The Commission is of the view that the licensee has demonstrated its intention to comply with its logger tape requirements in the future and is therefore satisfied that it is not necessary to issue a mandatory order in this regard at this time. The Commission reminds the licensee that it must be able to comply at all times with the requirements of section 8 of the Regulations with respect to program logging and recording.
22. Nevertheless, the Commission remains concerned about the licensee's non-compliance with respect to the submission of annual reports. The Commission considers that the licensee has not convinced the Commission of its intention to comply with section 9(2) of the Regulations, which requires the submission of an annual report. Although the licensee submitted its annual report for the broadcast year ending 31 August 2003 at the public hearing, the Commission notes that, to date, Radio Express has not submitted its annual reports for the current licence term for the broadcast years ending 31 August 2000, 31 August 2001, 31 August 2002 and 31 August 2004. The Commission notes that during the previous licence term the licensee did not submit its annual report for the broadcast year ending 31 August 1999.
23. Accordingly, the Commission is of the view that it should issue a mandatory order regarding the submission of annual reports by which the licensee must comply at all times during the new licence term with the requirement set out in section 9(2) of the Regulations to the effect that the licensee must submit, on or before 30 November of each year, a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous 31 August. The Commission also orders the licensee to submit, no later than 60 days from the date of this decision, the annual reports for the broadcast years ending 31 August 2000, 31 August 2001, 31 August 2002 and 31 August 2004. Broadcasting Mandatory Order CRTC 2005-1 is set out in Appendix II to this decision.
24. Furthermore, following an analysis of the annual report for the broadcast year ending 31 August 2003 and contrary to the licensee's statements at the hearing, the Commission notes that the licensee did not make the annual \$400 contribution for Canadian talent development and did not fulfil its requirement to pay the amount of \$2,880 for the year in question to third-party organizations involved in Canadian talent development. Finally, since the reports for the broadcast years ending 31 August 2000, 31 August 2001, 31 August 2002 and 31 August 2004 were not submitted to the Commission, the Commission is unable to verify whether the contributions to Canadian talent development were made and whether the licensee fulfilled its payment requirements to third-party organizations involved in Canadian talent development. Accordingly, the Commission imposes on the licensee, as **conditions of licence**, the requirement to pay the unpaid balance of the contributions to Canadian talent development set out in paragraphs 9 and 10 of Decision 99-537 on or before 31 August 2005. Conditions of licence to this effect are set out in Appendix I to this decision.

25. In light of the licensee's non-compliance and of the discussions held at the public hearing, the Commission considers that CKOD-FM Valleyfield's licence should be renewed for a short term in order that the Commission may continue to monitor the station's performance and ensure that it has permanently solved its non-compliance issues. The Commission considers that a licence term of 18 months is reasonable.
26. Accordingly, the Commission **renews** the broadcasting licence for the radio programming undertaking CKOD-FM Valleyfield from 1 March 2005 to 31 August 2006, 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 of licence** set out in Appendix I to this decision.
27. The Commission emphasizes that it may have 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 CKOD-FM Valleyfield's 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 at the following Internet site: <http://www.crtc.gc.ca>.*

## Appendix I to Broadcasting Decision CRTC 2005-49

### 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.
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, in that broadcast week, 55% or more of its musical selections from content category 2 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, 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 selection,” “content category” and “musical selection” shall have the same meaning as that set out in the *Radio Regulations, 1986*.

3. The licensee shall pay, on or before 31 August 2005, the unpaid balance of its annual \$400 contribution that must be paid to third-party organizations involved in Canadian talent development as set out in the condition of licence in paragraph 9 of *Licence renewal for CKOD-FM*, Decision CRTC 99-537, 8 December 1999, and in *Administrative renewals*, Broadcasting Decision CRTC 2003-290, 21 July 2003, in *Administrative renewal*, Broadcasting Decision CRTC 2004-88, 20 February 2004, and in *Administrative renewal*, Broadcasting Decision CRTC 2004-325, 9 August 2004.
4. The licensee shall pay, on or before 31 August 2005, the unpaid balance of its annual \$2,880 contribution over five years for Canadian talent development, as set out in the condition of licence in paragraph 10 of *Licence renewal for CKOD-FM*, Decision CRTC 99-537, 8 December 1999.
5. 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, and 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.



## **Appendix II to Broadcasting Decision CRTC 2005-49**

### **Broadcasting Mandatory Order CRTC 2005-1**

Radio Express inc., licensee for CKOD-FM 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 Valleyfield – Licence renewal and issuance of a mandatory order*, Broadcasting Decision CRTC 2005-49, 10 February 2005, 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.

Radio Express inc. is also hereby ordered to submit to the Commission, no later than 60 days from the date of this decision, the annual reports for the broadcast years ending 31 August 2000, 31 August 2001, 31 August 2002 and 31 August 2004.