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Robert A. Morin,
Secretary General
Canadian Radio-televsions and Telecommunications Commission
Ottawa, ON K1A ON2

April 14, 2011

Dear Secretary General,

RE: Broadcasting Notice of Consultation CRTC 2011-188

1. I am writing on behalf of the National Campus and Community Radio Association/ l'Association nationale des radios étudiantes et communautaires ("NCRA/ANREC") in support of an application by Vancouver Co-operative Radio ("CFRO") to renew the community radio programming undertaking CFRO-FM, expiring 31 August 2011, and in opposition to the Commission issuing a mandatory order or suspending or refusing to renew CFRO's license. We request the opportunity to appear at this hearing.

2. The NCRA/ANREC is a not-for-profit national association working to recognize, support, and encourage volunteer-based, non-profit, public-access campus and community-based broadcasters in Canada. We provide advice and advocacy for individual campus and community ("c/c") stations, and conduct lobbying and policy development initiatives for the sector with a view to advancing the role and increasing the effectiveness of our sector. Our goals are to ensure stability and support for individual stations, and to promote the long-term growth and effectiveness of the sector.

The Regulatory Issues

3. The Commission notes in CRTC 2011-188 that CFRO "may have failed to comply with s. 9(2) of the Regulations, relating to the submission of annual returns, for the 2008-2009 and 2009-2010 broadcast years."

4. CFRO's March 8, 2011 response letter to the CRTC explained the circumstances that led to their late-filed 2009-2010 annual return, including three factors:

(1) Commission staff sent renewal forms to CFRO using a different email address than the one CFRO previously provided to the CRTC for this purpose.

(2) Responsibility to file annual returns rested with the Financial Manager, a new CFRO employee who was soon after discharged for being “unable to complete the functions of her position.”

(3) Staff turnover occurred at a critical point prior to the filing deadline.

5 The NCRA/ANREC believes CFRO’s staff structure and policies are sound and functional. We note that their Employee Probation Policy caught a problem (an employee unable to discharge her duties) at an early stage (during her probationary period), and addressed it promptly. It was anomalous that the timing of this incident, and the fact that staff could not fulfill the Financial Manager’s duties until a replacement was hired, led to a short delay in submitting the 2009-2010 forms to the CRTC.

6. As a result of the late-filed annual return, CFRO recognized that improvements to staff structure and function could be made and quickly took appropriate steps including:

(1) Creating a shared annual calendar listing all official deadlines, including CRTC and other government requirements, adding review of this calendar as a standard agenda item at all bi-weekly staff meetings, and adding a written verification system for staff to confirm that each deadline is met.

(2) Creating a second layer of oversight by adding the calendar to the board of directors’ regular agenda so they can verify that staff complete tasks on time.

(3) Developing a more thorough training regime for the Financial Manager position, and implementing it when the new Financial Manager was hired.

7. We are informed that CFRO’s 2008-2009 annual return was also submitted approximately two weeks late by a different Financial Manager who is also no longer employed at CFRO. Other staff were not aware that the forms had been submitted late until two years later when the Commission notified CFRO in a letter dated March 2, 2011. If a system of oversight had been in place, such as CFRO’s new shared calendar and verification system, CFRO and the NCRA/ANREC believe that the annual return forms would not likely have been submitted late.

8. To the best of our knowledge, CFRO has complied with s. 9(2) of the Regulations on previous occasions. We believe that CFRO’s response upon realizing possible non-compliance with s. 9(2) of the Regulations was swift and proactive, and we believe that this demonstrates CFRO’s strong desire to comply fully with all regulatory requirements.

9. We request that the Commission consider that fact that CFRO, like many c/c stations, struggles financially, and has had trouble attracting experienced applicants for its part-time staff positions due to low salaries. Further, when assessing possible non-compliance, we propose that in each case the Commission take into account the circumstances in which it occurred. This would include consideration of how egregious the non-compliance was (i.e. how long after the deadline the requirement was met – in this case, only eight weeks), the degree of good faith responsiveness the licensee exhibited when possible non-compliance was brought to their attention (in this case, high), the licensee’s past history in meeting each section, and the new

measures implemented by the licensee to rectify non-compliance and ensure that it is not repeated.

10. In CRTC 2011-188 the Commission asks CFRO to “show cause why the Commission should not suspend or refuse to renew” their broadcasting license. We strongly discourage the Commission from suspending or not renewing CFRO's broadcasting license. We believe that these measures are unnecessarily punitive of the station, its hundreds of volunteers, and its listeners. On all occasions when the Commission has found CFRO in non-compliance, they promptly made appropriate changes to technology, training, policies and procedures to ensure future compliance, and they have complied with those sections of the Regulations on all subsequent occasions. We ask the Commission to take these good faith efforts into account, and to consider CFRO's history of compliance with each section of the Regulations before imposing such harsh consequences. We believe that to suspend, or refuse to renew CFRO's license would be detrimental to the Vancouver community, the c/c radio sector, and the Canadian broadcasting system.

11. In CRTC 2011-188 the Commission also asks whether a mandatory order should be issued requiring CFRO to comply with s. 9(2) of the Regulations. We believe this is not necessary, as CFRO has already demonstrated their commitment to comply through the actions outlined above. Further, we discourage the Commission from issuing mandatory orders to stations in the c/c sector whenever possible. We believe the effect of them would be to increase stations' stress and fear of more severe repercussions without supporting them to develop better systems to ensure that Regulations are not breached in future. We believe it is in the best interests of the Canadian broadcasting system and incumbent upon the Commission pursuant to s. 3(1)(b) of the *Broadcasting Act* to ensure that all three radio sectors are healthy and vibrant. C/c stations want and intend to be fully compliant, but some encounter legitimate barriers to doing so. We believe that supporting c/c stations to meet all regulatory requirements through the provision of clear summaries of regulatory requirements, sample documents, how-to guides, and advice would be more constructive in ensuring full compliance than the threat of court proceedings.

12. At CFRO's last license renewal (CRTC 2008-119), they were granted a short-term renewal based on non-compliance with s. 2.2(8) of the Regulations (Canadian musical selections from content category 2). The Commission's analysis for the week of November 5-11, 2006 showed that CFRO played 32.8% Canadian musical selections in category 2, only 2.2% less than the 35% required under the Regulations.

13. At that time, CFRO explained the non-compliance based on three factors:

- (a) There was a discrepancy between how the Commission classified some of the musical selections in question and how CFRO classified them.
- (b) A program focused on category 2 replaced a regularly scheduled program focused on category 3 whose hosts were temporarily unable to attend.
- (c) Some selections of audio/sound art broadcast that week were not counted toward CFRO's Canadian Content Requirement because they were not classed as musical selections, despite being original Canadian productions.

14. The NCRA/ANREC is pleased to have the opportunity to comment on Canadian Content requirements and content category composition in CRTC 2011-174, and we hope changes can

be made so that categories will accurately reflect the diverse and experimental nature of programming produced by c/c radio stations. We believe CFRO's points (a) and (c) above suggest that the existing music categories should be re-defined in ways that may prevent similar non-compliance by other stations in the future.

15. We are informed that CFRO took the following steps to ensure that all of their Canadian Content requirements will be met in future:

(a) They require that all replacement programming must be of the same genre as the regularly scheduled programming.

(b) Staff regularly remind all programmers of Canadian Content requirements for all music selection categories. A poster has also been placed in the on-air booth.

(c) Log sheets are regularly reviewed for compliance with Canadian Content and programmers who do not fulfill the requirements are notified and warned.

16. Although we do consider CFRO's non-compliance with s. 2.2(8) to be a serious matter, we do not believe it indicates a larger pattern of non-compliance. On that occasion, the non-compliance pertained to content category 2, which represented just 10% of CFRO's music programming. However, almost 50% of CFRO's category 3 music programming (which made up 90% of their music programming) qualified as Canadian Content. As such, CFRO clearly prioritizes Canadian voices and artists. We further believe that CFRO's explanation was reasonable, and that the measures they implemented have effectively prevented further breaches; on no other occasion in the last five years has CFRO been found to be in non-compliance with s. 2.2(8) of the Regulations.

17. Finally, we also draw the Commission's attention to the NCRA/ANREC's April 11, 2011 comments in CRTC 2011-173 (Proposed Amendments to the Radio Regulations):

"As monitoring by the Commission is assessed on a weekly basis, it only requires a few small errors to cause a station to dip below the required level for that week, despite a longer term pattern of compliance and even over-performance."

18. While we believe it is critical for c/c stations to comply with all applicable policies and regulations, we believe it would help stations like CFRO if the Commission made changes to its assessment procedure, in recognition of stations' good faith efforts to comply. Our April 11, 2011 submission in CRTC 2011-173 stated:

"We also recommend that if stations are found to be in non-compliance with this section of the Regulations within one broadcast week, that the Commission broaden the assessment period to four broadcast weeks. We believe this longer assessment period would more accurately represent stations' compliance performance."

19. The Commission noted in CRTC 2004-341 that during their 2001- 2004 license term, CFRO failed to comply from 17-23 November 2002 with s. 8 of the Regulations requiring audible audio logs.

20. Before digital logging technology was available, c/c stations commonly used VHS tapes, which were cumbersome and unreliable. It was prohibitively expensive to use new tapes for each recording, so tapes were re-used causing deterioration. It took nearly one hundred tapes

to log the four weeks of content required by the Regulations. Common volunteer errors included forgetting to replace full tapes, and mislabeling or misfiling tapes. We explain this not to excuse non-compliance, but to illustrate that it may have been common for stations logging by VHS to be inadvertently and briefly non-compliant.

21. In 2003, CFRO was able to install a digital logging system. We note that in the intervening eight years, CFRO has not been found in non-compliance with s. 8 of the Regulations again.

CFRO's History and Accomplishments

22. CFRO is a cornerstone of community broadcasting in Canada, with 400 active volunteers. It has inspired and assisted other community stations, and is recognized as a leader in the campus and community sector for its longevity, development of policies and procedures, governance model, implementation of organized management systems, training and supervision of programmers, accountability and responsiveness of staff and board, and levels of professionalism in both programming and governance.

23. CFRO is also known throughout the community radio sector for its exceptional commitment to locally-produced and locally-focused spoken word programming, grassroots community access, and identification with its core community, Vancouver's Downtown Eastside (DTES). CFRO has played an active role in shaping best practices in community radio journalism, and they have a history of contributing to the NCRA/ANREC's development and to Commission proceedings on policy issues.

24. In March 1974, a group representing 231 cooperative shareholders presented their vision to the CRTC for a community-based station in the heart of Vancouver. In their submission they described their intentions to "keep people informed about local cultural and public affairs", "provide an outlet for local artists and musicians" and "make radio more accessible to minorities and community groups." This group envisioned a station that would better serve the needs of greater Vancouver, and provide an alternative to "existing commercial programming and the national focus of the CBC."

25. Describing the earliest days of community radio in Canada, and the licensing of CFRO, CKWR-FM and CINQ-FM in 1973-1974, Charles Fairchild described how community radio developed through the grassroots communities it now serves:

*"a truly national system of community access radio stations developed only gradually into (not from) a clear, well-defined policy of providing a public access alternative to the CBC and commercial media"*¹

26. One year after CFRO was first licensed, upon licensing Ottawa c/c station CKCU-FM, the Commission recognized the importance of the new c/c radio sector by stating:

*"many of the different sectors of social life cannot find a place on the national service or the private commercial outlets. It is for this reason that the Commission has been willing to develop new models for different voices"*²

¹ Fairchild, Charles; Community Radio and Public Culture, New Jersey: Hampton Press, 2001, 147, quoted in Fateaux, Brian, The Development of Community Radio in Quebec: The Rise of Community Broadcasting in Late 1960s and Early 1970s Canada. Canadian Journal of Media Studies, vol. 3(1).

² CRTC 1975-4 quoted in Fateaux, Brian, The Development of Community Radio in Quebec, *ibid.*

27. The NCRA/ANREC believes that CFRO helped shape the Commission's understanding of the c/c sector, and directly impacted the development of the CRTC's policies relating to c/c radio. CFRO's original organizational values and goals can still be detected in the Campus and Community Radio policy as it exists today.

28. CFRO's co-operative governance model is also notable in Canadian community radio history. CFRO was the first co-operatively organized radio station in Canada, and its unique structure and inherent commitment to internal democracy set an example for other stations across the country. In particular, (CJLY-FM and CHLI-FM), both benefited directly from CFRO's groundwork in this area and chose to incorporate as co-ops.

29. CFRO volunteers articulated their vision 37 years ago for a radio station that would be accessible, informative, entertaining and relevant to their community; and, as early CFRO programmer Rani Gill put it, "bring voices in from the margins." CFRO has maintained its commitment to these principles throughout its history in both structure and content. CFRO now has four part-time staff who manage day-to-day operations, and committees to accomplish tasks in specific areas.

30. Staff, board and committees are all guided by CFRO's extensive policy manual, which provides a "framework through which just and equitable decisions can be made, operational guidance provided and healthy growth achieved."³ At 53 pages, the current version of this policy manual is one of the most substantial and detailed in the sector.

31. The manual contains policies addressing in detail administrative structures (staff, volunteer, committee and board roles), and hiring and evaluation of staff. Many sections of this policy were recently amended. The CFRO board of directors regularly reviews policies and procedures and maintains a list of policies to be amended when time permits, or when clarifications or improvements are required. The policies and procedures are posted prominently at the station, and all staff and volunteers are required to familiarize themselves with policies relevant to their role in the station.

32. CFRO's commitment to spoken word programming is exceptional in the c/c sector, especially in the absence of funding for a News Director or a news department. Almost 50% of the station's programming is locally-produced public affairs programming. About 20% of their programming is broadcast in 13 different third-languages. CFRO gives priority to people from language groups with no or insufficient media access elsewhere. CFRO's flagship English-language spoken word program is "Redeye", a 3-hour public affairs program featuring interviews, diverse news stories, and eclectic music. Produced by a large volunteer collective, Redeye has been on the air for more than 30 years.

33. CFRO is also recognized locally and nationally for its strong commitment to programming reflecting West Coast Indigenous realities and concerns. Since 2009, CFRO has featured a program called "Sne'waylh", a Squamish-language word for "Teachings". Aboriginal youth produce this program, which focuses on education and sharing of language, stories and cultural traditions. Other shows produced by First Nations or Metis programmers, such as "When Spirit Whispers" and "Metis Matters" have been broadcast on CFRO since the 1980s.

³ CFRO Policy Compendium, last updated August 2010.

34. CFRO is also known for its innovative music programming. 80% of its music falls into Category 3, and much of that is local, third-language or experimental. CFRO has made significant contributions to the fields of Canadian audio art and sound art, and it offers specialty training to emerging artists. CFRO's expertise began with programmers like Hildegard Westerkamp, creator of the World Soundscape Project, who is known worldwide as a sound ecologist, audio artist and composer. Westerkamp describes her experience at CFRO starting in 1974 as "pivotal to her career" and says the experience gave her "the opportunity to consider radio as an artistically expressive medium and to address issues of environment and acoustic ecology."⁴ Westerkamp left radio in 1991 to concentrate on composing, but CFRO still provides opportunities for emerging artists to communicate their vision and develop their skills on programs like "Soundscapes".

35. CFRO has also provided opportunities for volunteers like Ina Dennekamp, one of Vancouver's most prized piano tuners, who focused her show, "Women of Note", on women classical and experimental music composers. This is an example of the specialization that exists only in the c/c sector as a result of community access.

Conclusion

36. The NCRA/ANREC strongly discourages the Commission from issuing a mandatory order requiring CFRO to comply with section 9(2) of the Regulations. We also strongly discourage the Commission from suspending or not renewing CFRO's broadcasting license due to previous issues of non-compliance. We believe that CFRO intends to and has the capacity to be fully compliant with the Radio Regulations, and we are confident that this will occur. Further, we believe that to suspend or refuse to renew CFRO's licence would be highly detrimental to the c/c radio sector and unnecessarily punitive to CFRO and its volunteers and listeners.

Sincerely,



Catherine Fisher
President
NCRA/ANREC

cc: CFRO-FM
c/o Program Coordinator Leela Chinniah

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⁴ McCARTNEY, Andra Shirley Jean. *Sounding Places: Situated Conversations through the soundscape compositions of Hildegard Westerkamp*. 1999, McGill University thesis, p 154.