

NCRA / ANREC



July 2016

*Brought to you by the
NCRA/ANREC External
Policy Committee*

Regulatory Update

Broadcasting Licence Renewals

The CRTC is no longer contacting stations that are up for renewal; it's up to those stations to know and fill out the forms online using a My CRTC Account before the deadline.

There are 3 member stations up for renewal this year, and 7-9 member stations up for renewal in 2018 (the application deadline will be August 31, 2017).

More information is on p. 26 of the Regulatory Support Guide, available in the members-only section of the NCRA website.

Sample forms and instructions are here:
http://www.crtc.gc.ca/eng/forms/form_201.htm

Be sure to start early because it might take you longer to fill out the form than you expect, and technical difficulties with the submission process are common especially if you leave

it to the last minute.

Note that stations have reported difficulty with the online form (e.g. it can only be used with Internet Explorer 7, content may be lost if you don't complete and submit quickly, there's no way to save a copy of what you submit). So it's best to prepare and save your responses in another document in advance and then paste them into the spaces on the form when you're ready to submit.

Common errors: miscalculating the number of hours of programming per broadcast week (section 2.1), misidentifying content as local programming (section 2.2) vs. other sources of programming (section 2.3) – ask for help if you're not sure.

If the CRTC has found possible non-compliance at any time since your last licence renewal

(e.g. annual returns filed late, incomplete, or with incorrect content), they will notify you and ask for your response.

If your renewal was for less than 7 years because of past non-compliance, you may have been required to meet certain conditions of licence that were imposed at the time the shortened renewal period was granted – if you're not sure what your conditions were or whether you met them, contact us or the CRTC small undertakings line (1-866-781-1911).

If your station is notified about possible non-compliance, the regulatory committee can help stations prepare responses (the CRTC needs to be convinced that the station has taken ownership of the problem and taken sufficient steps to prevent the non-compliance from ever happening again before they will grant a full term licence.

Emergency Broadcasting

The implementation deadline was March 31, 2016.

More information is on p. 18 of the Regulatory Support Guide.

If your station doesn't have its equipment up and running reliably or has been encountering problems, please contact us to discuss.

It's better to apply to the CRTC for an extension, even long after the deadline, than to be in non-compliance and hope they don't notice.

The NCRA can help you apply for an extension (6 members were recently approved for a 1-year extension, so it is achievable and not too difficult).

If you're encountering technical problems, try posting to the members listserve to ask if anyone else has had the same problems and can advise (there has already been some good listserve discussion about these issues recently).

Logs and Records

- Reminder: the requirement to keep logs changed this year and is now 4 weeks (the previous requirement was to keep them for one year)
- Note that logs must be kept for 8 weeks if the CRTC receives a complaint and notifies a licensee before the end of the 4 week period.
- It's a good practice to keep logs for 8 weeks regardless in case a complaint is made that your station isn't notified about until the last minute.
- See the Regulatory Support Guide p. 15-17 for detailed information about what must be contained in your logs.

Complaints

Don't forget that your station should have policies/procedures in place for dealing with complaints if/when you receive any.

Your policy/procedure should address who handles complaints, what steps they should take when a complaint is received (e.g. document the complaint, listen to audio logs, meet with programmers, etc.), what criteria they should use to evaluate whether a complaint is valid, if a complaint is found to be valid what should be done to ensure that the issue raised doesn't happen again (e.g. programmer discipline, re-training, etc.), what type of response should be provided to the complainant.

This type of policy/procedure is important in case a complaint is ever submitted by a listener to

the CRTC – if that happens, the CRTC will forward it to your station and ask you to reply and copy the CRTC on your response.

The CRTC will expect your response to describe your policy/procedure and the steps you carried out in order to evaluate and respond to the complaint.

If the CRTC finds that your response or your policy/procedure are inadequate, they can require that you revise them before they will consider the matter to be concluded, and failure to satisfy Commission staff can result in the matter being included in your station's file for your next licence renewal.

See the Regulatory Support Guide p. 32 (and p. 30 in interventions section) for more.

Protected vs. Unprotected Frequencies

Low power stations broadcasting at 50 watts or less are unprotected, which means that new commercial radio applicants or existing commercial stations wishing to increase their signal range can propose to use the low power station's frequency or a first adjacent frequency that will cause interference with the low power station's signal.

Stations broadcasting at 51 watts or more have protected frequencies, meaning that applicants are not permitted to encroach on their 3mv contour.

Low power stations are vulnerable to having their frequencies encroached upon or taken over, usually without warning (applicants have to serve a copy of their application on stations that will be affected if it's approved, but that doesn't give low power stations much time to respond before the CRTC hearing is held).

This can happen even in rural communities where there appear to be lots of available frequencies – an applicant may decide that a low power station's frequency would be the best one to use for technical reasons even if they have many other options.

If your station is low power, you should think about planning to apply for a full power licence sometime in the future to secure your frequency.

If you hear that an applicant may be planning to encroach on your low power signal, let the NCRA know – we may be able to help you negotiate with the applicant.

In some cases an applicant can be persuaded to help a low power station move to a new frequency at a protected power level.

Power Increases

Reminder for low power stations that increasing your power to a protected power level (i.e. 51 watts or more) now requires a new licence application.

It was formerly done by way of a simple technical amendment to your original licence, but the CRTC decided last year that more scrutiny is required.

With a new licence application, stations now have to prove that there will be benefit to the community in licensing the station as a full power station (rather than as an upgraded low power station); it also ensures that stations are proposing a mandate that includes the entire community to be served by the expanded signal (instead of trying to broaden the smaller community served by the original licence).

A full power application requires an engineering brief completed by an engineer (you can't draw your own contour map for applications above 50 watts) so you'll need to hire an engineer – the NCRA listserve can provide suggestions for affordable engineers (you can hire one located anywhere in Canada and they can do the work remotely).

If you want to apply to change your status from unprotected to protected, the NCRA can help you prepare your application.

More information is on p. 28 of the Regulatory Support Guide.

Re:Sound Copyright Tariff

Reminder that the Copyright Board decided in 2014 that our members owe Re:Sound a flat rate of \$25 per year dating back to 2008, for all online music streams (simulcasts, streaming archives, and other music streams).

Part of that decision was challenged in court by Re:Sound, but only the part dealing with commercial rates and not the rate that applies to our sector.

The hearing took place at the Federal Court of Appeal earlier this year and the court hasn't released a decision yet.

We assume the decision won't affect our sector, but if the court decides to remit the matter back to the Copyright Board for a new decision, the Board will re-write the whole thing (but we don't expect them to change the part pertaining to us). We'll let you know if anything happens that could affect NCRA members.

SOCAN Tariff Changes

Earlier this year the NCRA, ARCC, and ARCQ signed an agreement with SOCAN so that our sector's broadcasting activities, including online music activities, will all be covered by tariff 1B (the same tariff that currently covers stations' terrestrial FM or AM broadcast content).

Online music activities include simulcasts, webstreams of other content, and downloadable or streaming archives of past broadcast content. They do not include podcasts (i.e. digital audio files available for download, typically available as a series, new installments of which can be received by subscribers automatically) or video streaming.

This change simplifies how tariffs for our sector are handled and provides certainty that SOCAN won't introduce new tariffs in the near future. Most stations won't notice anything different though in terms of paying or reporting to SOCAN – online activities were previously covered by tariff 22C, which said that as long as stations reported their internet-related operating costs when submitting financials for tariff 1B, they didn't have to pay anything more, and it will be the same under the new tariff. For online-only stations, this will mean a change from the \$100 minimum charge under tariff 22F (which will no longer apply) to 1.9% of gross operating costs under tariff 1B.

After we signed the agreement, a settlement tariff with the new wording of tariff 1B was submitted to the Copyright Board for approval. The Board is very slow and still hasn't approved it. Until they do, the old tariffs (1B, 22C, and 22F) remain in effect, so online-only stations still pay the \$100 under 22F for now.

We'll let you know when the new tariff is approved and the change is effective.

CMRRA/ CSI Tariff

Lawyers for CMRRA and SODRAC (together "CSI") approached us earlier this year to discuss a settlement since the NCRA, ARCC, and ARCQ have opposed every tariff they've proposed in the last 8 years, and they'd prefer to come to an agreement with us than to go through an onerous Copyright Board hearing process.

We asked that any settlement include an agreement by CMRRA to waive payment of the current CMRRA tariff, in place since 2008, which requires our members to pay a 0.14% of gross operating costs, and which CMRRA has not tried to collect from stations for the past 8 years.

We're still waiting for a response. We will provide an update when we've made some progress.

Note: CMRRA and SODRAC tariffs are for stations' internal reproduction of musical works.

SOCAN Reporting Changes

Did you know that the reporting requirements for SOCAN survey periods have been simplified?

You can now submit the same logs to SOCAN that you keep for CRTC purposes (as long as you add a field to indicate musical selections that are used as background/ theme and their length). You no longer have to list composers and time (start and length) for every song.

See the NCRA Turns 30 email from Barry Rooke sent to members on July 14, or contact the NCRA office for details.

NCRA/ANREC External Policy Committee

Current members: Barry Rooke, Freya Zaltz, Catherine Fisher, Luke Smith, Ophira Horowitz, Geneviève Dale, Johnnie Regalado.

The committee terms of reference are here: <https://sites.google.com/site/boardncra/committees/regulatory-committee>

Summary of CRTC Session at NCRC

This year's session was presented by 4 CRTC staff (2 from the radio policy group and 2 from the small undertakings single point of contact line).

They gave a short presentation about the role of CRTC staff vs. Commissioners (staff do research and speak to licensees, Commissioners make decisions and policies), and they talked about the CRTC website and how to find things there (we're giving a webinar about regulatory issues on August 10, 2016 and we'll attach the CRTC presentation to our webinar materials for members to view).

They spent most of their time answering questions from delegates on the following topics: (1) power increase applications, (2) frequency protection, (3) how to find an FM frequency in a market with congested spectrum, (4) emerging digital technologies and alternatives to AM and FM broadcasting, (5) transmitter upgrades and reasons applications fail, (6) weight of interventions from commercial broadcasters in c/c radio applications, (7) stations near the US border and dealing with the FCC, (8) campus instructional stations, and (9) applying for a licence for a rebroadcast transmitter.

Here are the most useful tips they provided:

- When searching the CRTC website, if you don't put the "-FM" extension after your station's call letters it will search only AM stations instead.

- Applications submitted are labelled as "part one" or "administrative" by CRTC staff; part one can take 4-5 months, and administrative can be 30 days; which one depends in part on how big an impact the application will make if granted.
- The most common reasons applications fail are: (a) they're missing information; (b) they're asking for more than they should (e.g. they're proposing a power increase that's too big for the size of the community they're mandated to serve).
- Interventions will only be seriously considered by the Commission if they contain evidence to back up arguments made – e.g. if an intervention says that an application should not be approved because it will negatively affect the intervener's station, proof of the negative impact must be provided.
- CRTC decisions are based on approval from Industry Canada, so most things require an application to IC first.
- When applications might affect other licensees, a copy of the application must be served them when it is submitted to the CRTC.

Do you need regulatory support?

The NCRA's External Policy committee can assist with regulatory processes, including the following:

- reviewing draft applications (new licence, licence renewal, technical amendment, exemption or extension for conditions of licence, etc.) and provide feedback
- providing feedback on how to address possible regulatory non-compliance and other issues that require correspondence with the CRTC
- writing letters of support for stations' applications
- assisting low power stations in negotiating with commercial broadcasters or CBC regarding unprotected frequency issues

The Committee can also provide information about copyright tariffs, legislation, and other issues with external government and regulatory bodies.

You can contact the committee by emailing or phoning the NCRA office. You can also ask questions about these topics at the committee's webinar on August 10.