



Broadcasting Decision CRTC 2006-352

Ottawa, 10 August 2006

3553230 Canada inc.
Saint-Constant, Quebec

*Application 2004-1035-8
Public Hearing in Québec, Quebec
20 March 2006*

CJMS Saint-Constant – Licence renewal

The Commission renews the broadcasting licence for the French-language commercial radio programming undertaking CJMS Saint-Constant from 1 September 2006 to 31 August 2008. This short-term renewal will allow the Commission to assess, at an earlier date, the licensee's compliance with the provisions of the Radio Regulations, 1986.

The application

1. The Commission received an application by 3553230 Canada inc., a corporation controlled by Communications Médialex inc. (Médialex), to renew the licence for the French-language commercial radio programming undertaking CJMS Saint-Constant, expiring 31 August 2006.

Non-compliance

2. On 14 April 2003, the Commission directed Médialex to submit logger tapes and other related documents for the programming broadcast by CJMS Saint-Constant during the week of 6 to 12 April 2003.
3. On 29 May 2003, the licensee submitted the requested documents to the Commission.
4. The Commission's verification of the logger tapes and playlists submitted by the licensee for the week of 6 to 12 April 2003 showed that only 60.9% of the music broadcast during the broadcast week in question was devoted to French-language vocal music. Furthermore, the licensee failed to comply with regulations requiring the licensee to retain a clear and intelligible tape recording of all matter broadcast during the broadcast week.
5. On 6 August 2003, the Commission advised the licensee of its apparent non-compliance with sections 2.2(5), 8(5) and 8(6) of the *Radio Regulations, 1986* (the Regulations) regarding the broadcast of French-language vocal music and the retention and submission of tape recordings.

6. In a letter dated 25 August 2003, the licensee advised the Commission that, as a precautionary and preventive measure, it had paid specific attention to the percentage of French-language vocal music it broadcasts to ensure that it complies at all times with all percentages set out in the Regulations.
7. On 19 January 2006, the Commission issued Broadcasting Public Notice 2006-2 (Public Notice 2006-2) in which it noted the licensee's apparent failure to comply with the provisions of the Regulations concerning the broadcast of French-language vocal music during the broadcast week and the submission of logger tapes. The Commission also noted its receipt of complaints concerning the verbal content of certain programs broadcast on CJMS and the licensee's subsequent removal of the programming in question.

Interventions

8. The Commission received several interventions, including petitions, opposing this application. In his opposing intervention, Yves Sauvé argued that CJMS is a predominantly spoken-word station rather than a country music station. He also pointed out the lack of local programming aired by the licensee, which, according to Mr. Sauvé, is evidence of the licensee's abandonment of Saint-Constant and the surrounding area. Michel Mathieu also opposed the licence renewal, arguing that Médialex consistently fails to meet its obligations as a broadcaster, and noting the station's precarious financial situation and Médialex's failure to comply with the regulatory requirements of the Department of Industry. Finally, Mr. Sauvé and Mr. Mathieu emphasized the licensee's deficiencies with respect to the broadcast of French-language vocal music, the percentage of Canadian content aired and the licensee's contributions to Canadian talent development.
9. André Turcôt, shareholder in and director of CJMS, explained to the Commission the disagreement that exists between the station's directors and pointed out the station's precarious financial situation.
10. The other interventions, all filed by individuals, generally raised the same concerns as Mr. Mathieu and Mr. Sauvé, such as CJMS's alleged lack of presence in the community of Saint-Constant, the abusive comments made by certain hosts and the broadcasting of religious programming.

Licensee's reply

11. In response to Mr. Sauvé's intervention, Médialex stated that it is complying with the terms and conditions of its licence because music programming represents at least 75% of the station's daily broadcasts and 95% of the music aired is consistent with its country music format. Médialex confirmed that it serves the community it is licensed to serve, and listed recent local events covered by CJMS. Médialex also acknowledged that there has been some delay in its Canadian talent development contributions, and explained that it has made arrangements regarding the payment of the outstanding amounts. With

respect to deficiencies involving the broadcast of French-language vocal music, Médialex explained that, in order to ensure that there is no reoccurrence, it now accepts special requests at least one week before special request call-in programs.

12. Médialex also included with its reply a large volume of letters in support of its application from several municipalities and individuals.

The public hearing

Logger tapes and French-language vocal music

13. At the 20 March 2006 Public Hearing, the licensee explained that, at the time of the apparent non-compliance with respect to the retention of logger tapes, such tapes were created using tape recordings, and that this system had been replaced by a software program that digitally records its programming directly to disk.
14. With respect to the licensee's failure to comply with French-language vocal music requirements, the licensee attributed that failure to the broadcast of a call-in show during which very few special requests for French-language country music had been received. Médialex reported that it had taken steps to prevent a reoccurrence, including the introduction of a procedure whereby it now accepts special requests one week before the call-in show is broadcast.

Contributions to Canadian talent development

15. At the hearing, the licensee said it had reached an agreement with MusicAction to remit all outstanding amounts, and filed a copy of the agreement. The licensee also indicated that for 2005-2006, it has made a \$4,000 donation to the Festival Western de St-Tite.
16. When asked about contributions to be made in the form of funding for scholarships or live shows, the licensee stated that it was its intention to discharge all outstanding talent development commitments to MusicAction, i.e., \$8,000 per year, except for 2005-2006.

Annual reports

17. As part of this public proceeding, the Commission reviewed the financial information it has received concerning CJMS for the years 2001 to 2006, and determined that the licensee did not file annual reports for the operating years 2002-2003 and 2004-2005.
18. At the Commission's request, the licensee committed to submitting the missing annual reports by 31 March 2006.

Religious programming

19. According to the interventions received, the licensee broadcasts religious programming. When asked about the programs listed in the station's program schedule, the licensee confirmed that Monday to Friday between 10:00 a.m. and 10:30 a.m., it broadcasts a program titled *Contact*, which offers religious instruction.

20. The licensee agreed to accept a condition of licence requiring it to adhere to the balance and ethics guidelines set out in *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993 (the Religious Policy).

Complaints and the code of ethics

21. Since 2001, the Commission has received 34 complaints about CJMS, mainly concerning programs hosted by André Arthur, open-line programs and the content of infomercials. These complaints expressed concerns about the programming broadcast by the licensee and its consistency with the high standard requirement.
22. At the hearing, the licensee reported that it was developing a code of ethics pertaining to programs with open-line components. At the Commission's request, the licensee filed a copy of the code on 5 April 2006, and agreed to adhere to the code as a condition of licence.

Commission's analysis and determination

23. The Commission notes the licensee's confirmation that it has now taken the necessary steps to remedy the non-compliance concerning the broadcast of French-language vocal music and the requirement concerning the submission of logger tapes, and is satisfied with those steps. The Commission reminds the licensee that it is required to comply at all times with the provisions of the Regulations, including those concerning the broadcast of French-language vocal music and the retention and submission of logger tapes.
24. The licensee committed to filing evidence of payment of outstanding amounts to MusicAction under the contract filed at the hearing, and evidence of the licensee's donation to the Festival Western de St-Tite. The Commission notes that it has received a letter from Jean-François Dubois, the former general manager of CJMS, indicating, among other things, that \$4,000 set aside for the Festival Western de St-Tite has been paid under the terms of a contract. The Commission reminds the licensee that, pursuant to *An FM policy for the nineties*, Public Notice 1990-111, 17 December 1990, the Commission generally does not accept Canadian talent development initiatives where the station derives a financial benefit from that initiative. In this context, the contribution made to the Festival Western de St-Tite does not appear to comply with the Commission's policy on eligible Canadian talent development expenditures.
25. The Commission notes that the licensee failed to adhere to the commitment it made at the public hearing to file, by no later than 31 March 2006, annual reports for operating years 2002-2003 and 2004-2005, but did correct this continuing non-compliance by filing the reports with the Commission on 9 June 2006.
26. The Commission reminds the licensee that it has formally committed to file annual reports at the end of each fiscal year in compliance with the Regulations.

27. With respect to the broadcasting of religious programming, the Commission considers that the steps taken by the licensee will address the concerns of the interveners and the Commission. Accordingly, the licence will be subject to the **condition of licence** set out in Appendix I to this decision requiring the licensee to adhere to the balance and ethics guidelines set out in Parts III.B.2.a) and IV of the Religious Policy.
28. Consistent with its commitment, the licensee, by **condition of licence**, shall adhere to the code of ethics set out in Appendix II to this decision.
29. The Commission has reviewed the licence renewal application and the licensee's past performance. Given that this is the licensee's first violation of each of the regulatory requirements noted above, and given that the licensee has already taken action to remedy the non-compliance to the Commission's satisfaction, the Commission **renews** the broadcasting licence for the French-language commercial radio programming undertaking CJMS Saint-Constant from 1 September 2006 to 31 August 2008. This short-term renewal will allow the Commission to assess, at an earlier date, the licensee's compliance with the provisions of the Regulations concerning the broadcasting of French-language vocal music and the submission of logger tapes and annual reports, and with the condition of licence requiring the payment of annual Canadian talent development expenditures.
30. 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.
31. The Commission further expects the licensee to continue to broadcast at least four live shows per week and to ensure that the communities served by CJMS are adequately reflected in its programming.
32. At the hearing, the Commission advised the licensee of a recent decision by the Canadian Standards Broadcast Council (CSBC) regarding sponsored programs, i.e., CSBC decision 04/05-1171.¹ The Commission recommended that the licensee read the decision to ensure it fulfills its obligations when broadcasting sponsored programs. The Commission reminds the licensee of its responsibility to comply with the CSBC decision when broadcasting sponsored programs.
33. The Commission further reminds the licensee of its obligation to ensure that the content of its health-related programs complies with the intent of the regulations and codes that may apply to such programs.

¹ CSBC decision 04/05-1171 was issued following the review of a complaint about comments broadcast by station CFRB during the 6 March 2005 episode of the *Health Show*. In that decision, the CSBC found that, while the episode in question "was a paid or sponsored show ... CFRB did not clearly, transparently and unequivocally disclose that fact and the relationship between the sponsorship and the guests on the program."

Employment equity

34. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1991-59, 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>

Appendix I to Broadcasting Decision CRTC 2006-352

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 40% or more of its musical selections broadcast that 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 40% 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 contribute the amount of \$4,000 in each broadcast year to MusicAction.
4. The licensee shall contribute the amount of \$4,000 in each broadcast year to fund the broadcast of live shows or scholarships for artists as prizes in contests organized by the station.

All expenditures on Canadian talent development (CTD) must be made in accordance with the Commission’s policy on qualifying contributions to CTD, as set out in Appendix I to *An FM policy for the nineties*, Public Notice CRTC 1990-111, 17 December 1990.

5. The licensee shall remit to MusicAction, over the licence term, the amount of \$52,000 representing outstanding contributions to Canadian talent development incurred during the first licence term.

6. The licensee shall refrain from soliciting or accepting local advertising for broadcast during any broadcast week when less than one third of the programming aired is local. The definition of local programming shall be as set out in *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998, as amended from time to time.
7. The licensee shall adhere to the balance and ethics guidelines set out in Parts III.B.2.a) and IV of *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993, as amended from time to time, when broadcasting religious programming, as defined in that notice.
8. The licensee shall adhere to the CJMS Code of Ethics set out in Appendix II to this decision.
9. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' (CAB) *Sex-role portrayal code for television and radio programming*, as amended from time to time and approved by the Commission.
10. The licensee shall adhere to the provisions of the CAB's *Broadcast code for advertising to children*, as amended from time to time and approved by the Commission.

Appendix II to Broadcasting Decision CRTC 2006-352

Code of Ethics

1. CJMS will, inasmuch as possible and in a balanced and reasonable manner, ensure that its programming is a forum for the expression of differing points of view on matters of public interest.
2. CJMS will make every effort to ensure that its programming is of high standard and that no person, class of persons, association, or formal or informal group is exposed to contempt or hatred based on ethnic or national origin, race, colour, religion, age, physical or mental disability, sex, sexual orientation or family status.
3. CJMS will endeavour at all times to broadcast information programs, viewpoints, commentaries and editorials that demonstrate integrity, accuracy, objectivity and impartiality.
4. Hosts, journalists and guests will always disclose any personal interests they may have in an issue being discussed or commented on during a program. Commitment to a cause shall not under any circumstances lead to facts being distorted or presented in a non-objective or biased manner.
5. Similarly, hosts and journalists will not use the airwaves to launch personal attacks or to obtain personal favours of any kind.
6. A host may offer his or her opinion provided it is done with respect.
7. A host or journalist may, and in some cases must in the public interest, raise the validity of remarks made by a speaker in the course of a program in order to ensure balance and representativeness. CJMS shall do everything possible to maintain balance in its religious programs and in all its programming.
8. Listeners have a right of reply if they feel offended by an observation, commentary, interview, statement or report pertaining to them. Any person who wishes to exercise this right of reply may contact the general manager of the station, who will then work with the person making the request to determine the appropriateness and validity of the request and establish the terms and conditions of the reply.
9. The production teams for programs will verify the intentions and interests of guests or participants (listeners) on programs. Without limiting freedom of expression or the free flow of ideas and opinions, the production team will carry out the necessary checks to ensure that organized groups do not take control of programs.

10. Hosts and journalists are members of the production team and in that capacity endorse the choices made. They also share responsibility for ensuring compliance with these rules.
11. Open-line or call-in programs are subject to a time delay. The host or producer shall turn on the time delay system if remarks by a listener contravene the principles of this code of ethics. Any employee involved in this type of programming shall have a copy of this code and shall be directed to use the time delay system in the event of any doubt.
12. Participants in an open-line or other program, public figures, listeners, and formal or informal groups are entitled to respect and should not be harassed, insulted or ridiculed.
13. Coarse or vulgar remarks have no place in programming.
14. Hosts, journalists and other participants in information programs will ensure that their remarks, comments or reports do not interfere with any person's right to a fair trial.