



Broadcasting Decision CRTC 2009-133

Route reference:

Broadcasting Public Notice 2008-49

Additional reference:

Broadcasting Public Notice 2008-73

Ottawa, 12 March 2009

Radio 1540 Limited

Ottawa, Ontario and Gatineau, Quebec

Application 2008-0285-2, received 22 February 2008

CJLL-FM Ottawa/Gatineau – Licence renewal

*The Commission **renews** the broadcasting licence for CJLL-FM Ottawa/Gatineau, from 1 April 2009 to 31 August 2012. This short-term renewal will permit the Commission to review, at an earlier date, the licensee's compliance with its conditions of licence relating to Canadian talent development (CTD) that became effective during its previous licence term. The licensee must file a report, within 60 days of the date of this decision, providing specific details on its CTD expenditures during the previous licence term, how it will make up the shortfalls in its minimum required CTD expenditures, and how it will reallocate the expenditures originally directed to the Canadian Association of Ethnic Broadcasters catalogue of ethnic recordings.*

*The Commission **denies** the licensee's request for an amendment to its current condition of licence 3 that would have permitted it to reduce the minimum amount of third-language programming that CJLL-FM must broadcast weekly.*

Introduction

1. The Commission received an application from Radio 1540 Limited (Radio 1540) to renew the broadcasting licence for the commercial ethnic FM radio programming undertaking CJLL-FM Ottawa/Gatineau, which expires 31 March 2008.¹ The licensee also requested an amendment to its current condition of licence 3 that would permit it to reduce the minimum amount of third-language programming that CJLL-FM must broadcast weekly from 92% to 85%. There were 23 interventions in support of this application. The interventions are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

¹The Commission administratively renewed CJLL-FM's licence from 1 September 2008 to 31 December 2008 in Broadcasting Decision 2008-245 and subsequently from 1 January 2009 to 31 March 2009 in Broadcasting Decision 2008-359.

2. The Commission considers that the primary issues to be considered in its evaluation of this application are the following:
 - Has the licensee operated in compliance with its conditions of licence that set out its minimum annual contributions to Canadian talent development (CTD)?
 - Is approval of the proposed reduction in the minimum amount of third-language programming that CJLL-FM must broadcast warranted?

Commission's analysis and determinations

Compliance with CTD conditions of licence

3. Following a highly competitive licensing process, the Commission issued Decision 2001-625 authorizing Radio 1540 to operate an ethnic FM radio station in Ottawa/Gatineau. In accordance with the commitments made by Radio 1540 in its original application for a licence, the Commission imposed a condition of licence requiring that the licensee contribute a minimum of \$55,000 annually, or \$385,000 over seven consecutive broadcast years, in direct expenditures on CTD. As committed to by Radio 1540, its minimum annual CTD contributions were to be allocated as follows:
 - \$17,000 to Canadian Music Week;
 - \$10,000 to FACTOR;
 - \$10,000 to CHIN (Ottawa) Multicultural Music and Song Competition;
 - \$10,000 to CHIN (Ottawa) Multilingual Music Initiative;
 - \$5,000 to scholarships including \$3,750 for students at Carleton University, and \$1,250 to a student at the University of Ottawa; and
 - \$3,000 to the Canadian Association of Ethnic Broadcasters (CAEB) catalogue of ethnic recordings.
4. In accordance with an additional commitment to CTD made by Radio 1540 in its original licensing application, the Commission also imposed a condition of licence requiring the licensee to allocate \$5,000 per year to assist ethnic program development and training of ethnic broadcasters at the community-based campus radio stations CKCU-FM Ottawa and CHUO-FM Ottawa. Each station was to receive \$2,500 annually.
5. The Commission notes that the licensee's seven year CTD payment term began in October 2003, which corresponded with the station's launch, and will expire 31 August 2010. The licensee confirmed that it would continue its annual CTD expenditures beyond its first licence term, which expired 31 August 2008.

6. The Commission's analysis of CJLL-FM's expenditures revealed apparent non-compliance with its conditions of licence noted above. Specifically, the Commission's records indicate that:
 - the contributions to Canadian Music Week were incomplete in 2004, 2006 and 2007;
 - no contributions were made to FACTOR in 2004, 2005, 2006 and 2007;
 - no contributions were made to the CHIN (Ottawa) Multicultural Music and Song Competition and the CHIN (Ottawa) Multilingual Music Initiative in 2004, 2005 and 2006;
 - no contributions were made to scholarships for students at Carleton University and the University of Ottawa in 2004 and 2006;
 - no contributions were made to the CAEB catalogue of ethnic recordings in 2006; and
 - no contributions were made to assisting ethnic program development and the training of ethnic broadcasters at CKCU-FM and CHUO-FM in 2004, 2005, 2006 and 2007.
7. In addition, the licensee's conditions of licence clearly require that the expenditures be disbursed on an annual basis. However, the Commission's review seemed to indicate that that, in several instances, shortfall payments from one year were deferred to the following broadcast year.
8. With respect to the licensee's requirement to contribute \$3,000 annually to the CAEB catalogue of ethnic recordings, the Commission notes that, in the past, it accepted such contributions as an eligible CTD initiative. However, the Commission is of the view that the CAEB catalogue, in its present state, does not effectively support or promote Canadian ethnic artists. Accordingly, the CAEB catalogue can no longer be considered to be an eligible recipient of CTD or Canadian content development (CCD) funding, as these initiatives are currently known, pursuant to Public Notice 2006-158 (Commercial Radio Policy 2006). The Commission therefore directs the licensee to reallocate this annual \$3,000 contribution to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of Broadcasting Public Notice 2006-158 for its remaining commitments in this regard.
9. In light of the above, the Commission finds that, during its first licence term, the licensee was in apparent non-compliance with its conditions of licence respecting CTD expenditures. However, based on the information available to it, the Commission is not able to unequivocally determine the exact amounts of the licensee's shortfalls. The Commission therefore directs the licensee to file, within 60 days of the date of this decision, a report that clearly sets out specific details on the following:
 - the licensee's expenditures on CTD for its station CJLL-FM Ottawa, during its previous licence term, flowing from the requirements outlined in Decision 2001-625, including the amounts and initiatives to which these amounts were contributed;

- how the licensee plans to allocate the expenditures needed to make up the shortfalls in its minimum required expenditures on CTD, including the initiative to which this funding would be directed;
 - how the licensee plans to reallocate the annual \$3,000 that was previously directed to the CAEB catalogue.
10. A condition of licence to this effect may be found in the appendix to this decision.
11. The Commission notes that this is the first time that it has observed the licensee to be in non-compliance with CJLL-FM's conditions of licence. As set out in Circular No. 444, where apparent non-compliance is observed for the first time, the station is normally granted a short-term licence renewal, generally for four years, to permit a further review of its compliance within a reasonable period of time. The Commission therefore finds it appropriate to renew the licence for this undertaking for a short-term period of four years, in accordance with Circular No. 444.² This short-term renewal will enable the Commission to assess at an earlier date the licensee's compliance with its regulatory obligations and conditions of licence.

Proposed reduction in third-language programming

12. Radio 1540 submitted that the use of English is increasing in the ethnic communities it serves but that interest in culturally relevant information and entertainment remains strong. According to the licensee, reducing the amount of third-language programming that CJLL-FM must broadcast would allow it to offer more English- or French-language ethnic programming that would appeal to second and third generation members of ethnic communities in Ottawa/Gatineau. In Radio 1540's view, its proposal would therefore enable it to better serve all members of its target ethnic audience.
13. The Commission's longstanding practice is to deny licence amendments requested by licensees that are in non-compliance with their regulatory obligations or conditions of licence. Given CJLL-FM's non-compliance with its conditions of licence stipulating minimum contributions to CTD, the Commission does not consider that a departure from its practice is warranted in this case.

Conclusion

14. In light of the above, the Commission **renews** the broadcasting licence for the ethnic commercial FM radio programming undertaking CJLL-FM Ottawa/Gatineau, from 1 April 2009 to 31 August 2012. The Commission **denies** the proposed amendment to CJLL-FM's current condition of licence 3. The terms and **conditions of licence** are set out in the appendix to this decision.

² The four years is calculated from the original licence expiry date of 31 August 2008, before it was extended through administrative renewals.

15. The Commission reminds the licensee that it is required to adhere to the requirements relating to contributions to Canadian content development set out in section 15 of the *Radio Regulations, 1986* as amended from time to time.

Employment equity

16. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Human Resources and Social Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Administrative renewals*, Broadcasting Decision CRTC 2008-359, 22 December 2008
- *Administrative renewals*, Broadcasting Decision CRTC 2008-245, 29 August 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *New ethnic FM station for Ottawa/Hull*, Decision CRTC 2001-625, 4 October 2001
- *Practices regarding radio non-compliance*, Circular No. 444, 7 May 2001
- *Contributions by radio stations to Canadian talent development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995

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 to Broadcasting Decision CRTC 2009-133

Terms and conditions of licence

Terms

The licence will expire 31 August 2012.

Conditions of licence

1. The licence will be subject to the conditions set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, with the exception of condition of licence 7.
2. The licensee shall offer, on a weekly basis, programming directed to a minimum of 37 cultural groups in a minimum of 20 languages.
3. The licensee shall devote a minimum of 94% of the programming broadcast in each broadcast week to ethnic programming as defined in *Ethnic broadcasting policy*, Public Notice CRTC 1999-117, 16 July 1999, as amended from time to time.
4. The licensee shall ensure that at least 92% of programming aired in each broadcast week is in languages other than English, French or a Canadian Aboriginal language.
5. The licensee shall devote no more than 15 hours per broadcast week to the broadcast of regional open-line programming.

For the purpose of this condition, regional open-line programming means open-line programming that is broadcast simultaneously on CJLL-FM Ottawa/Gatineau and on CHIN or CHIN-FM Toronto.

6. As an exception to section 2.2(4) of the *Radio Regulations, 1986*, the licensee shall ensure that at least 10% of the musical selections broadcast during ethnic programming periods each broadcast week are Canadian selections.
7. The licensee shall allocate \$5,000 per year to assist in ethnic program development and in training ethnic broadcasters at the Ottawa/Gatineau campus radio stations CKCU-FM and CHUO-FM. Each of the two stations shall receive \$2,500 per year.

8. The licensee shall fulfill the remaining two years of its original annual \$55,000 Canadian talent development contribution for the 2009 and 2010 broadcast years. The licensee shall make these contributions in the following manner:
 - \$17,000 to Canadian Music Week;
 - \$10,000 to FACTOR;
 - \$10,000 to the CHIN (Ottawa) Multicultural Music and Song Competition;
 - \$10,000 to the CHIN (Ottawa) Multilingual Music Initiative;
 - \$5,000 to scholarships including \$3,750 for students at Carleton University, and \$1,250 to a student at the University of Ottawa; and
 - \$3,000 to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of Broadcasting Public Notice 2006-158 for its remaining commitments in this regard.

9. The licensee shall file a report within 60 days of the date of this decision setting out the following:
 - a. the licensee's expenditures on Canadian talent development (CTD) for its station CJLL-FM Ottawa, during its previous licence term flowing from the requirements outlined in Broadcasting Decision 2001-625 including the amounts and initiatives to which these amounts were contributed;

 - b. how the licensee plans to allocate the expenditures needed to make up the shortfalls in its minimum required expenditures on CTD including the initiatives to which they would be directed and a schedule of their payment; and

 - c. how the licensee plans to reallocate the annual expenditure of \$3,000 referred to in condition of licence 8 that was previously directed to the Canadian Association of Ethnic Broadcasters catalogue, including the initiative to which this funding will be directed.