



Broadcasting Decision CRTC 2010-631

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Route reference: 2010-138

Ottawa, 30 August 2010

3553230 Canada Inc.
Saint-Constant, Quebec

Application 2010-0392-0, received 26 February 2010
Public Hearing in the National Capital Region
10 May 2010

CJMS Saint-Constant – Licence renewal

The Commission renews the broadcasting licence for radio station CJMS Saint-Constant from 1 September 2010 to 31 August 2014. 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 and its conditions of licence.

Introduction

1. The Commission received an application from 3553230 Canada Inc. (the licensee) to renew the broadcasting licence of the French-language AM commercial radio programming undertaking CJMS Saint-Constant, which expires 31 August 2010.
2. In Broadcasting Notice of Consultation 2010-138, the Commission noted the licensee's apparent failure to comply with its condition of licence concerning Canadian talent development (CTD) contributions, as set out in Broadcasting Decision 2008-223. In that decision, the Commission renewed the CJMS's licence for a short-term period of two years given that it was the second time that CJMS had been found in non-compliance with the *Radio Regulations, 1986* (the Regulations) and with its condition of licence relating to CTD contributions. The Commission also imposed a condition of licence requiring the licensee to remit all outstanding amounts for CTD contributions incurred during the first licence term by 31 August 2008.
3. Noting that the licensee had not made the required payments within the prescribed time frame, the Commission summoned the licensee to a public hearing to show cause why a mandatory order should not be issued requiring the licensee to comply with its condition of licence relating to CTD contributions. The Commission also expected the licensee to demonstrate why the Commission should not suspend, revoke or fail to renew CJMS's licence, pursuant to sections 9 and 24 of the *Broadcasting Act* (the Act).

4. The Commission received a comment from the Association québécoise du disque, du spectacle et de la vidéo as well as two opposing interventions – a joint intervention by communications advisor Michel Mathieu and country producer and host Roger Charlebois, and one from Denis Laberge. The public record of this proceeding is available on the Commission’s website at www.crtc.gc.ca, under “Public Proceedings.”

Commission’s analysis and determinations

5. Having examined the application and the interventions in light of applicable policies and regulations, the Commission considers that the issues to be addressed are as follows:
 - CTD contributions;
 - the broadcast of newscasts;
 - submission of music lists; and
 - the broadcast of Canadian musical selections and French-language vocal music.

CTD contributions

6. CJMS’s condition of licence relating to CTD contributions is set out in Broadcasting Decision 2008-223 as follows:

As indicated in *CJMS Saint-Constant – Licence renewal*, Broadcasting Decision CRTC 2006-352, 10 August 2006, the licensee shall remit to MUSICACTION any outstanding contributions to Canadian talent development incurred during the first licence term. The last remittance must be made to MUSICACTION by 31 August 2008.

7. The Commission notes that, when Broadcasting Notice of Consultation 2010-138 was issued, the Commission had no evidence that the required payments had been made in accordance with this condition of licence.
8. At the request of Commission staff, the licensee provided proof of payment of the outstanding contributions incurred during the first licence term in a letter dated 16 March 2010. The Commission notes that two payments were made late, after the 31 August 2008 deadline. During the hearing, the licensee stated that, because it lacked liquidity, it had entered into an agreement with MUSICACTION to obtain an extension and remit the payments when it had the funds to do so. The Commission stated that, because the licensee had not notified the Commission of the change, the licensee was in non-compliance. During the hearing, the Commission clarified that it needed to approve any changes relating to conditions of licence before they were implemented. Acknowledging its error, the licensee stated that it had focused its

efforts on paying the total amount due and had not realized that it had to obtain the Commission's approval for any changes made to the payment agreement.

9. The Commission reminds the licensee of the importance of attaching proof of payment of its Canadian content development (CCD) contributions to its annual returns. Annual returns must contain proof of payment, such as cancelled cheques or payment receipts from third parties.

The broadcast of newscasts

10. The absence of newscasts after 5:00 p.m., Monday to Thursday, and during the entire broadcast day Friday to Sunday was discussed during the intervention process. In its licence renewal application, the licensee proposed to broadcast a minimum of 84 hours of local programming each broadcast week. It stated that the station broadcasts five hours of news, weather, sports, traffic and other surveillance information each week. In a letter dated 8 March 2010, the licensee stated that CJMS broadcasts 3 hours and 36 minutes of news (excluding weather, sports, surveillance, etc.) per week, at least 70% of which is devoted to local news.
11. After reviewing the logger tapes and the programming for the week of 19 to 25 July 2009, the Commission concluded that no newscasts aired during the periods addressed by the interventions. During the hearing, the licensee stated that this was due to the shortage of staff during the summer vacation period.
12. The Commission is of the view that newscasts are of particular interest to listeners living in the area served by CJMS and play an essential role in helping listeners stay informed about local news. During the hearing, the Commission referred the licensee to the definition of "local programming" set out in Broadcasting Public Notice 2006-158 and stressed the importance of newscasts. The Commission reminds the licensee that local programming must include spoken word material of direct relevance to the communities served by the station, including local news, weather and sports, and the promotion of local events and activities.

Submission of music lists

13. In a letter dated 30 July 2009, the Commission asked the licensee to provide the logger tapes and a list of the musical selections aired during the week of 19 to 25 July 2009. The Commission notes that, although the information was submitted on time, the first list was incomplete. The Commission notes that it had to repeat the request several times before it obtained a complete list. During the hearing, the licensee stated that the list was incomplete because some pre-recorded shows did not list the musical selections that were broadcast. The licensee added that henceforth, pre-recorded programming (music blocks) will include each selection directly in the music list. The Commission reminds the licensee that music lists must include all musical selections aired during the period in question and must be submitted to the Commission on request.

The Broadcast of Canadian musical selections and French-language vocal music

14. The Commission reviewed the programming broadcast by CJMS during the week of 19 to 25 July 2009. The analysis shows that during this period, the licensee complied with Commission requirements regarding the broadcast of French-language vocal music and Canadian content.

Conclusion

15. As mentioned above, the Commission notes that the CTD contributions for the first licence term have been made. The Commission also notes that the licensee has complied with all other requirements (submission of annual returns, CCD contributions, compliance with its other conditions of licence including the code of ethics and the Regulations). Finally, the Commission notes that no complaints were filed during this licence term. The Commission therefore considers it unnecessary to issue a mandatory order pursuant to section 12(2) of the Act at this time.

16. As set out in Circular No. 444, when a station is found in non-compliance for a second time, the Commission usually renews the licence for a period of two years. However, the Commission notes that the licensee has improved considerably in fulfilling its regulatory obligations, and that the licensee has taken the necessary measures to comply with its conditions of licence and the requirements of the Regulations at all times. Under these circumstances, the Commission considers it justified to deviate from standard practice and that a four-year licence renewal is appropriate.

17. Accordingly, the Commission **renews** the broadcasting licence of the French-language AM commercial radio programming undertaking CJMS Saint-Constant from 1 September 2010 to 31 August 2014. This short-term renewal will allow the Commission to assess at an earlier date the licensee's compliance with the provisions of the Regulations and its conditions of licence. The terms and **conditions of licence** are set out in Appendix 1 to this decision.

18. The Commission also reminds the licensee that it must comply with CCD requirements as set out in section 15 of the Regulations, as amended from time to time. The parties and initiatives eligible for CCD funding are listed in paragraph 108 of Broadcasting Public Notice 2006-158.

19. The Commission also reminds the licensee that it must submit, no later than 30 November of each year, the annual return for the broadcast year ending the previous 31 August. The CCD contribution form and proof of payment must accompany the annual return.

Secretary General

Related documents

- *Notice of Hearing*, Broadcasting Notice of Consultation CRTC 2010-138, 10 March 2010
- *CJMS Saint-Constant – Licence renewal*, Broadcasting Decision CRTC 2008-223, 26 August 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *CJMS Saint-Constant – Licence renewal*, Broadcasting Decision CRTC 2006-352, 10 August 2006
- *Practices regarding radio non-compliance*, Circular No. 444, 7 May 2001

**This decision is to be appended to the licence.*

Appendix 1 to Broadcasting Decision CRTC 2010-631

Terms, conditions of licence and encouragement for French-language AM commercial radio programming undertaking CJMS Saint-Constant

Terms

The licence will expire 31 August 2014.

Conditions of licence

1. The licence will be subject to the conditions set out in *Conditions of licence for AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.
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* (the Regulations):
 - a) Devote, during each broadcast week, 40% or more of its selections from content category 2 (popular music) to Canadian selections broadcast in their entirety; and
 - b) devote, between 6 a.m. and 6 p.m., in any period beginning on Monday of a week and ending on Friday of the same week, a minimum of 40% of its musical selections from content category 2 (popular music) to Canadian selections broadcast in their entirety.

For the purposes of this condition, the terms “content category,” “broadcast week,” “Canadian selection” and “musical selection” shall have the same meaning as that set out in the *Radio Regulations, 1986*. The term “category” shall have the same meaning as that of the term “content category” set out in these same regulations.

3. 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 2006*, Public Notice CRTC 2006-158, 15 December 2006, as amended from time to time.
4. Where the licensee broadcasts religious programming as defined in the *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993, the licensee shall adhere to the guidelines set out in sections III.B.2.a) and IV of that public notice with respect to the provision of balance and ethics in religious programming, as amended from time to time.

5. The licensee shall comply with the CJMS Code of Ethics set out in Appendix 2 to this decision.

Encouragement

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 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.

Appendix 2 to Broadcasting Decision CRTC 2010-631

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.