



Broadcasting Decision CRTC 2010-893

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Route reference: 2010-487

Ottawa, 30 November 2010

4352416 Canada Inc.
Peterborough, Ontario

Application 2010-0396-2, received 27 February 2010

CJMB-FM Peterborough – Licence renewal

*The Commission **renews** the broadcasting licence for the English-language specialty radio station CJMB-FM Peterborough from 1 December 2010 to 31 August 2014. This short-term licence renewal will enable the Commission to review, at an earlier date, the licensee's compliance with the Radio Regulations, 1986 and its conditions of licence.*

*The Commission also **approves** the licensee's request relating to the type of music programming that may be broadcast on CJMB-FM during the Christmas period, beginning 1 December and ending 5 January of the same broadcast year.*

Introduction

1. The Commission received an application by 4352416 Canada Inc. (4352416 Canada) to renew the broadcasting licence for the English-language specialty radio programming undertaking CJMB-FM Peterborough, which expires 30 November 2010.¹ The Commission did not receive any interventions in connection with this application.
2. The licensee also requested an amendment to its condition of licence relating to the broadcast of musical selections from subcategory 35 (Non-classic religious).²
3. In Broadcasting Notice of Consultation 2010-487, the Commission stated that the licensee may have failed to comply with section 9(2) of the *Radio Regulations, 1986* (the Regulations), which relates to the provision of annual returns, for the 2006-2007 and 2007-2008 broadcast years. In addition, the licensee may have failed to comply with its condition of licence relating to Canadian talent development (CTD) contributions, for the

¹ This broadcasting licence was administratively renewed from 1 September 2010 to 30 November 2010 in Broadcasting Decision 2010-547.

² The licensee also proposed to increase the amount of spoken word programming that it is permitted to broadcast such that more than 50% of its programming broadcast each broadcast week would be spoken word programming. In regard to this request, the Commission notes that the licensee already has the flexibility required in order to increase its spoken word programming to this amount given that it is operating in the Specialty format, in accordance with Public Notice 1995-60.

2005-2006 and 2007-2008 broadcast years, and to Canadian content development (CCD) for the 2008-2009 broadcast year.

Commission's analysis and determinations

4. After examining the application in light of applicable regulations and policies, the Commission considers that the issues to be addressed in its determinations relate to the following:
 - the provision of annual returns;
 - contributions to CTD/CCD; and
 - the proposed amendment to CJMB-FM's condition of licence relating to musical selections from subcategory 35.

Provision of annual returns

5. As set out in section 9(2) of the Regulations, licensees are required to file, before 30 November of each year, their annual return for the broadcast year ending the previous 31 August. The Commission notes that, for the 2006-2007 and 2007-2008 broadcast years, the licensee's annual returns were filed after this 30 November deadline.
6. In this regard, the licensee noted that it should not be held accountable for the late filing of the station's annual returns, since it was not the licensee of the station during the periods when the instances of non-compliance occurred. However, the Commission considers that as any part of the necessary due diligence, any instance of non-compliance that occurs during a radio station's term of licence becomes the responsibility of the new owner of the station following its acquisition of that station.³
7. The Commission notes that the licensee has put in place measures to ensure the station's compliance with the submission of annual returns in the new licence term. These include a reminder system to file annual returns to the Commission by the 30 November deadline date following the end of each broadcast year.

Contributions to Canadian talent development/Canadian content development

8. In Broadcasting Decision 2009-383, the Commission approved an application by Andy McNabb, on behalf of a corporation to be incorporated, for authority to acquire from King's Kids Promotions Outreach Ministries Incorporated the assets of the Christian music station CKKK-FM Peterborough and for a broadcasting licence to continue the operation of the undertaking. This undertaking now operates under the call sign CJMB-FM.

³ The Commission expressed the same view in Broadcasting Decisions 2010-418 and 2010-321, for example, in which it considered that the new licensees of the radio stations referred to were to be held responsible for past non-compliance with required contributions to CTD.

9. In that decision, the Commission also set out the following condition of licence relating to CTD, which was originally imposed on CKKK-FM in Broadcasting Decision 2004-201, prior to the acquisition of the assets of that station by Mr. McNabb:

The licensee shall devote a minimum of \$3,000 per year to support Canadian talent development. Through a talent contest, the \$3,000 shall be allocated as follows: the first-prize winner will receive \$1,500 for the professional production of a CD; the second- and third-prize winners will receive \$900 and \$600, respectively.

10. The Commission notes the following in regard to the required CTD contributions for the station:

- no contributions to CTD were made in the 2005-2006 broadcast year;
- for the 2007-2008 broadcast year, CTD contributions totalling \$5,789 were claimed but no proof of payment or any supporting documentation was provided to the Commission; and
- for the 2008-2009 broadcast year, CCD contributions totalling \$9,625 were claimed but no proof of payment or any supporting documentation was provided to the Commission.

11. The current licensee reiterated that it was not the licensee of the station during the above-noted broadcast years and stated that it should therefore not be held accountable for the non-payment of required CTD/CCD contributions. It also stated that it has no access to the vendor's records in this regard. Finally, the licensee offered, as a measure to be put in place to ensure future compliance at all times, to contribute the required annual CTD contribution of \$3,000 before 31 August 2010, and indicated that it has a reminder scheduled in its calendar to ensure that its required contributions are made.⁴

12. Nevertheless, as noted above, the Commission considers that it was the new licensee's responsibility to verify the state of the station it was acquiring, including its adherence to conditions of licence.

13. The Commission further notes that the claimed contributions for the 2007-2008 and 2008-2009 broadcast years have been disqualified, since they cannot be confirmed or verified. Accordingly, the total CTD/CCD shortfall for the station amounts to \$9,000 (\$3,000 per broadcast year for the three broadcast years in question). However, the Commission notes that the station has been off air since April 2008 due to tower relocation issues. Noting that its policy requires a licensee to contribute to the development of Canadian talent and content when it starts operating its station, in this

⁴ The licensee also requested that the above-mentioned condition of licence relating to CTD be deleted and replaced by the requirement to adhere to the basic annual CCD requirement set out in section 15 of the Regulations. The Commission notes that this requirement relating to CCD contributions is already set out in Broadcasting Regulatory Policy 2009-62.

particular case, the Commission considers that the current licensee should not be required to contribute the required CTD payments for the period during which the station was not in operation.

14. Accordingly, the Commission requires the licensee to contribute \$4,750 (\$3,000 for the 2005-2006 broadcast year and \$1,750 for the 2007-2008 broadcast year, the latter representing the seven months that the station was in operation during that broadcast year) to fulfill the station's past CTD requirements. A **condition of licence** to this effect is set out in the appendix to this decision.
15. As noted above, the licensee committed to make a CTD contribution of \$3,000 before 31 August 2010. Given that the station is currently off the air and that the licence for the station has been administratively renewed until 30 November 2010, the licensee may apply this contribution to the shortfall amount of \$4,750, due no later than 31 August 2011.

Proposed amendment to CJMB-FM's condition of licence relating to the broadcast of musical selections from subcategory 35

16. In Broadcasting Decision 2009-383, the Commission set out the following condition of licence for CJMB-FM in regard to the broadcast of musical selections from subcategory 35:

The licensee shall ensure that a minimum of 90% of all musical selections broadcast during each broadcast week shall be devoted to selections drawn from subcategory 35 (non-classic religious).

17. Since not all Christmas songs fall into subcategory 35, which is defined as music of religious faiths, including gospel music hymns, and contemporary music, the licensee requested seasonal flexibility so as to be permitted to broadcast a minimum level of 67% of category 3 (Special interest) music (which includes music from subcategory 35) and a maximum level of 33% of category 2 (Popular music) music each week during the Christmas season. The licensee identified this period as beginning 1 November and ending 5 January, within the same broadcast year.
18. The Commission notes that, typically, the broadcast of Christmas songs on radio occurs during the month of December. In a letter dated 28 April 2010, the Commission asked the licensee to comment on the possibility for CJMB-FM to broadcast the proposed percentages for each type of music, for the period beginning 1 December and ending 5 January of the same broadcast year.
19. In a reply letter dated 10 May 2010, the licensee indicated that it would like to play Christmas music as early as possible in November because of positive feedback it has experienced in this regard with other stations it has operated. It further proposed 15 November as a start date should the Commission consider that 1 November is too early, but also noted that it would accept a start date of 1 December if the Commission deemed it appropriate.

20. The Commission's general practice is to deny licence amendments requested by licensees that are in non-compliance with the Regulations or their conditions of licence. However, the Commission notes that, in the present case, the programming flexibility requested is seasonal and temporary (for roughly a one-month period during each broadcast year) and considers that it would not undermine the integrity of the station's condition of licence relating to the broadcast of musical selections and, ultimately, of its Specialty format. It further notes that no interventions opposing the application were received. The Commission therefore considers that allowing CJMB-FM the flexibility to broadcast no less than 67% of category 3 music and no more than 33% of category 2 music, during the period beginning 1 December and ending 5 January within the same broadcast year, is reasonable and appropriate. Accordingly, the Commission **approves** the licensee's request relating to the broadcast of music from subcategory 35. A **condition of licence** to this effect is set out in the appendix to this decision.

Conclusion

21. In light of all of the above, and in accordance with its practice regarding radio non-compliance set out in Circular No. 444, the Commission considers that a short-term renewal period for CJMB-FM would be appropriate. Accordingly, the Commission **renews** the broadcasting licence for the English-language specialty radio programming undertaking CJMB-FM Peterborough from 1 December 2010 to 31 August 2014. This short-term renewal will enable the Commission to review, at an earlier date, the licensee's compliance with the Regulations and with its conditions of licence. The licence will be subject to the **conditions** set out in the appendix to this decision.

Employment equity

22. In accordance with Public Notice 1992-59, 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

Related documents

- *Administrative renewals*, Broadcasting Decision CRTC 2010-547, 3 August 2010
- *CFEQ-FM Winnipeg – Licence renewal*, Broadcasting Decision CRTC 2010-418, 30 June 2010
- *CHNK-FM Winnipeg – Licence renewal and amendment*, Broadcasting Decision CRTC 2010-321, 28 May 2010
- *CKKK-FM Peterborough – Acquisition of assets*, Broadcasting Decision CRTC 2009-383, 26 June 2009
- *Christian music FM radio station*, Broadcasting Decision CRTC 2004-201, 9 June 2004

- *Practices regarding radio non-compliance*, Circular No. 444, 7 May 2001
- *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995
- *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992

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

Appendix to Broadcasting Decision CRTC 2010-893

Terms and conditions of licence for the English-language specialty programming undertaking CJMB-FM Peterborough

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 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 station shall be operated within the Specialty format as defined in *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000, and *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995, as amended from time to time.
3. With the exception of the period beginning 1 December and ending 5 January within the same broadcast year, the licensee shall ensure that a minimum of 90% of all musical selections broadcast during each broadcast week shall be devoted to selections drawn from subcategory 35 (Non-classic religious).
4. During the period beginning 1 December and ending 5 January within the same broadcast year, the licensee shall devote, during each broadcast week, a minimum of 67% of the station's music programming to musical selections drawn from content category 3 (Special interest music) and a maximum of 33% of the station's music programming to musical selections drawn from content category 2 (Popular music).
5. The licensee shall ensure that, during each broadcast week, a minimum of 15% of musical selections drawn from content category 3 (Special interest music) are Canadian selections.
6. The licensee shall expend, by no later than 31 August 2011, the remaining \$4,750 of the initial Canadian talent development commitment imposed by condition of licence in *CKKK-FM Peterborough – Acquisition of assets*, Broadcasting Decision CRTC 2009-383, 26 June 2009 (Broadcasting Decision 2009-383). The remaining amount shall be allocated as follows:

The first \$3,000 shall be allocated as indicated in condition of licence 5 of Broadcasting Decision 2009-383; the remaining \$1,750 shall be directed to an eligible Canadian content development initiative listed in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.