



Broadcasting Decision CRTC 2012-147

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Ottawa, 13 March 2012

7590474 Canada Inc.
Laval, Quebec

Application 2011-1208-6

CJLV Laval – Licence amendment

*The Commission **denies** the application to amend the broadcasting licence for the French-language commercial AM radio station CJLV Laval.*

Introduction

1. The Commission received an application by 7590474 Canada Inc. (7590474 Canada) to amend the broadcasting licence for the French-language commercial AM radio programming undertaking CJLV Laval in order to authorize it to devote, in each broadcast week, up to 40% of its programming to third-language programming.
2. The licensee stated that the station was experiencing significant financial losses. According to the licensee, approval of this application would enable it to serve certain underserved communities and increase station revenue, as well as to complement services currently available.
3. The Commission received one response, interventions supporting the application, interventions opposing the application, as well as replies to the response and the interventions. The complete record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Background

4. The undertaking's licence was originally issued in Broadcasting Decision 2003-193 to Gilles Lajoie and Colette Chabot, on behalf of a corporation to be incorporated, and was renewed in Broadcasting Decision 2010-290 for a short-term period of four years.¹ This short-term renewal was due to the non-compliance of Diffusion Laval inc., the licensee at the time, with regard to the requirement to file annual returns and with its condition of licence relating to Canadian talent development contributions.

¹ The licence was renewed from 1 June 2010 to 31 August 2013.

5. On 3 May 2011, in Broadcasting Decision 2011-293, the Commission approved the acquisition of CJLV by 7590474 Canada and issued a new broadcasting licence to continue operating the station under the same terms and conditions of licence as those in effect under the existing licence. These terms and conditions of licence are set out in Broadcasting Decision 2010-290.

Commission's analysis and determinations

6. After examining the record for this application in light of applicable policies and regulations, the Commission considers that the issues it must address are the following:
 - Has the applicant demonstrated in its application that the requested amendment is justified on an economic basis?
 - Would approval of the application have a negative impact on the ethnic stations in Montréal?
 - Has the station complied with its conditions of licence and regulations throughout the current licence term?

Has the applicant demonstrated in its application that the requested amendment is justified on an economic basis?

7. The Commission notes that the applicant stated that its application is based on economic need. According to 7590474 Canada, the station has not been profitable since it was launched. The financial data provided by the applicant shows that between 2006 and 2010 the station accumulated a deficit each year. The applicant partly attributes this poor financial performance to fierce competition from Astral and Cogeco stations in the greater Montréal market.
8. The respondent, CPAM Radio Union.com Inc. (CPAM), which is the licensee of the French-language ethnic station CJWI Montréal, as well as the opposing interveners, Méga Radio Inc. (Méga Radio) and Canadian Hellenic Cable Radio Limited (CHCR), submitted that the applicant had not demonstrated that the proposed amendment was the only solution to the station's financial problems. CHCR added that the applicant had not demonstrated that the French-language market in Laval was not viable.
9. CHCR further submitted that the application raised issues about the integrity of the Commission's licensing process, particularly given that the application was filed less than four months after the station was acquired. The intervener noted that the applicant had not indicated its intention to change CJLV's programming in the acquisition application, but rather had indicated that it wished to retain the station's current format. CPAM added that the applicant was surely aware of CJLV's financial state when it acquired the station and that it should not have counted on future licence amendments to restore the station's financial health.

10. CPAM further noted that 7590474 Canada is a corporation controlled by Radio Humsafar Inc. (Radio Humsafar), one of the applicants whose applications were denied in Broadcasting Decision 2011-720. Méga Radio contested the applicant's claim that the proposed amendment was related to the station's financial health, recalling that in the application filed by Radio Humsafar for a licence to operate an ethnic service, Radio Humsafar indicated that it had the necessary funds to operate two stations: the ethnic station proposed and CJLV, which would continue to be operated solely in French.
11. According to 7590474 Canada, several factors, such as competition from other stations, the concentration of the population and the lack of popularity of the AM band, contribute to there being no more room in the Montréal market for an independent AM French-language station. The applicant noted, however, that the majority of CJLV's programming, i.e., 60%, would be in French.
12. The Commission notes that the applicant indicated that it had unsuccessfully attempted to make the station profitable. However, the Commission notes that the applicant did not file financial projections concerning the additional revenue that would be generated by the proposed change. Though the applicant has convinced the Commission of its economic need given the financial difficulties experienced by the station between 2006 and 2010, the Commission considers that the applicant has not demonstrated how the proposed amendment would allow it to make its station profitable.

Would approval of the application have a negative impact on the ethnic stations in Montréal?

13. In its application, the applicant indicated that 50% of its third-language programming would be in Spanish, while the remainder would be in Haitian, Chinese, Portuguese and Greek. The Montréal market is already served by six stations targeting ethnic communities.
14. The respondent and some interveners expressed their concerns with respect to the impact that approval of this application would have on the existing ethnic stations in the Montréal radio market.
15. The Commission notes that it recently denied applications by Gospel Media Communications, Méga Radio, Neeti P. Ray, on behalf of a corporation to be incorporated, and Radio Humsafar for broadcasting licences to operate new AM commercial ethnic stations in Montréal. The Commission's denial in Broadcasting Decision 2011-720 was based on the economic impact that these new services could have on the existing ethnic stations in the Montréal radio market.
16. In light of the above, the Commission considers that CJLV's application could have a negative impact on the ethnic stations in Montréal, which already provide programming to the ethnic communities targeted by this application.

17. Furthermore, the Commission notes the comments made by certain interveners regarding the fact that the licensee does not currently broadcast any third-language programming. The Commission reminds the licensee that under section 7(3) of the *Radio Regulations, 1986*, the applicant may devote, in each broadcast week, up to 15% of its programming to third-language programming.

Has the station complied with its conditions of licence and regulations throughout the current licence term?

18. The Commission notes that in Broadcasting Decision 2010-290, it renewed the licence for CJLV for a short-term period of four years in light of the licensee's non-compliance with regard to the requirement to file annual returns for the 2003-2004 and 2004-2005 broadcast years and with its condition of licence relating to Canadian talent development contributions for the 2003-2004, 2004-2005 and 2005-2006 broadcast years.

19. Preliminary analysis of CJLV's compliance throughout the current licence term reveals an instance of non-compliance with regard to the filing of an annual return for the 2008-2009 broadcast year. This report was filed on 4 January 2010. This is the second consecutive instance of non-compliance for CJLV.

20. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to dealing with radio stations found in non-compliance. In particular, the Commission noted that it would consider the circumstances leading to the non-compliance in question, the licensee's arguments and the measures taken to rectify the situation. In accordance with its revised approach and given the level of seriousness of the instances of non-compliance identified, the Commission will process the present application based on its merits. The Commission advises the licensee that the non-compliance will be considered at the time of the renewal of its licence.

Conclusion

21. In light of the above, the Commission considers that approval of this application would be contrary to its conclusions on the impact of additional ethnic programming in the Montréal market set out in Broadcasting Decision 2011-720. In addition, the Commission considers that the applicant has not successfully demonstrated that approval of this application would allow it to ensure the financial health of CJLV. Accordingly, the Commission **denies** the application by 7590474 Canada Inc. to amend the broadcasting licence for the French-language commercial AM radio station CJLV Laval in order to be authorized to devote, in each broadcast week, up to 40% of its programming to third-language programming.

Secretary General

Related documents

- *Licensing of new radio stations to serve Montréal*, Broadcasting Decision CRTC 2011-720, 21 November 2011

- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *CJLV Laval – Acquisition of assets*, Broadcasting Decision CRTC 2011-293, 3 May 2011
- *CFAV Laval – Licence renewal and amendment*, Broadcasting Decision CRTC 2010-290, 19 May 2010
- *Commercial French-language AM radio station in Laval*, Broadcasting Decision CRTC 2003-193, 2 July 2003