



Broadcasting Decision CRTC 2012-550

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Ottawa, 10 October 2012

Radio 710 AM Inc.

Niagara Falls, Ontario

Application 2011-0862-1, received 20 May 2011

Public hearing in the National Capital Region

19 June 2012

CJRN Niagara Falls – Non-renewal of licence

*The Commission **denies** the application to renew the broadcasting licence held by Radio 710 AM Inc. for CJRN Niagara Falls.*

The application

1. The Commission received an application by Radio 710 AM Inc. (Radio 710) to renew the broadcasting licence for the English-language tourist radio programming undertaking CJRN Niagara Falls, which expires 30 November 2012.¹ The Commission did not receive any interventions concerning this application.
2. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Background

3. In Broadcasting Decision 2009-515, following a corporate reorganization, Radio 710 was granted a short licence term to 31 August 2011 due to its non-compliance with its condition of licence 1 requiring it to broadcast only pre-recorded tourist information for visitors to Niagara Falls, as well as its condition of licence prohibiting the broadcast of commercial messages. In particular, the Commission notes that the licensee had broadcast a live program in the Punjabi language and commercial messages targeting the Asian community in Toronto. At the time, the Commission reminded the licensee of its responsibility for all the programming it broadcasts and to ensure that it respects its conditions of licence at all times.

¹ The broadcasting licence for this station was administratively renewed until 31 August 2012 in Broadcasting Decision 2011-557, as amended by Broadcasting Decision 2011-557-1, and until 30 November 2012 in Broadcasting Decision 2012-341.

4. In Broadcasting Notice of Consultation 2012-224, the Commission noted that it appeared that the licensee had again failed to comply with its condition of licence 1 by broadcasting newscasts with international, national and regional items, promotions for other radio stations and sports updates that included international items during the broadcast week of 18 to 24 April 2010. In addition, the Commission noted that it appeared that the licensee had also failed to comply with this condition during the broadcast week of 14 to 20 August 2011, when it broadcast the program “Reflections on Islam,” which contained spoken word programming and musical selections.
5. The Commission further noted that the licensee may have failed to comply with sections 8(5) and 8(6) of the *Radio Regulations, 1986* (the Regulations) concerning the provision of clear and intelligible tape recordings or other exact copy of matter broadcast for the week of 14 to 20 August 2011, as well as section 9(2) of the Regulations concerning the submission of annual returns for the 2008-2009 and 2009-2010 broadcast years.
6. In Broadcasting Notice of Consultation 2012-224-1, the Commission added that it appeared that the licensee had further failed to comply with section 9(4) of the Regulations concerning the requirement to provide a response to a Commission inquiry for matters under its jurisdiction. Specifically, the licensee failed to provide its logger tapes for 14 and 15 August 2011 as requested, as well as a list of musical selections in the order in which they were broadcast and a self-assessment report for the broadcast week of 14 to 20 August 2011. Subsequently, in a clarification letter dated 17 May 2012, the Commission specified that the licensee may have failed to comply with sections 9(3)(a) and (b) of the Regulations relating to the requirements to produce a station self-assessment report and a music list for the above-noted broadcast week.
7. The Commission noted that it would inquire into these matters at the 19 June public hearing and that it expected the licensee to show cause at the hearing why mandatory orders requiring it to comply with sections 8(5), 8(6), 9(2), 9(3)(a), 9(3)(b) and 9(4) of the Regulations and with its condition of licence 1 should not be issued. Further, in Broadcasting Notice of Consultation 2012-224, as well as in various correspondence and again at the hearing, the Commission reminded the licensee that the Commission might consider recourse to additional measures, including short-term renewal, suspension, non-renewal or revocation of the licence pursuant to sections 9 and 24 of the *Broadcasting Act* (the Act).

Non-compliance

Broadcast of programming other than pre-recorded tourist information

8. The licensee’s condition of licence 1 states:

The licensee shall use this station solely to broadcast pre-recorded tourist information for the purpose of informing visitors to Niagara Falls.

Broadcast of news, sports updates and promotions

9. As part of its monitoring for the week of 18 to 24 April 2010, the Commission reviewed the programming of CJRN from 6 to 11 a.m. on 21 April 2010 and found that in addition to weather reports and other tourist information consistent with condition of licence 1, the station also broadcast the following:
- newscasts with international, national and regional items;
 - promotions for “105.1 The River” and “The All New Z101 at 101.1 on the FM dial”; and
 - sports updates that included international items, including NHL updates with respect to the following games: Detroit vs. Phoenix, Nashville vs. Chicago, Philadelphia vs. New Jersey and San Jose vs. Colorado.
10. When questioned as to how this programming complied with its above-noted condition of licence, Radio 710 stated that it considered that its newscasts and sports updates were of particular and direct relevance to visitors to Niagara Falls. The licensee also submitted that the presence of items in its newscasts relating to matters beyond its immediate area reflected the composition of the programming that people expect to hear during a news and information update.
11. The licensee further indicated that it felt it had an obligation to provide news, sports, weather, traffic and local information in order to be compliant with changes in the wording of the Act and the Commission’s policies and procedures, as well as with a revised definition of spoken word found in a radio policy review in December 2006. When questioned further about this explanation at the 19 June public hearing, Radio 710 indicated that it had not understood that CJRN was not subject to the changes.
12. With respect to the promotions, Radio 710 stated that it provided other information that was of particular and direct relevance and interest to visitors, including the identity and frequency of locally licensed Canadian border broadcasters. Radio 710 noted that tourists that listen to CJRN to obtain relevant information about Niagara Falls wish to learn how to locate local radio media and that it was unlikely that visitors to the Niagara region would otherwise know which stations were local stations.
13. Radio 710 added that its broadcast of the above-noted programming was not wilfully done to contravene any rules, but was a result of an error in interpreting the rules. Radio 710 also indicated that this type of programming was immediately deleted when the issue was raised by the Commission.

Broadcast of other spoken word and music programming

14. The Commission conducted a second monitoring of the programming of CJRN for the broadcast week of 14 to 20 August 2011. During that time a program was broadcast entitled “Reflections on Islam” containing spoken word programming and

musical selections which appeared to be inconsistent with the station's condition of licence 1.

15. When asked about the programming, Radio 710 noted that visitors to the Niagara region and Niagara Falls come from various ethnic backgrounds, cultures and religions and that it was of the view that the Canadian government in general, and the Commission in particular, had worked diligently to provide an accepting and inclusive culture to citizens, landed immigrants and visitors. The licensee added that it had accepted the request to provide a tourist service for many visitors to Niagara who were of the Muslim faith during their holy time of Ramadan. It indicated that CJRN had been providing this service for many years, including before Radio 710 became the licensee, and that it was led to believe that this was acceptable. Finally, the licensee noted that the Commission had not previously raised any concerns regarding the pre-recorded Ramadan programs.
16. Going forward, Radio 710 stated that it had increased the scrutiny of all new material produced and that in the future any material that might not be directly related to tourism and/or visitors to Niagara Falls would be supplied to the Commission for review and comment.

Commission's analysis and decision

17. The Commission notes that the licensee's condition of licence 1 relates to a fundamental part of the nature of its licence, which is for a tourist station. Accordingly, the Commission considers that any non-compliance with this condition of licence is a serious matter.
18. With respect to the broadcast of newscasts and sports during the week of 18 to 24 April 2010, the Commission notes that CJRN is a tourist radio programming undertaking, not a commercial radio undertaking, and as such, the provisions of the 2006 Commercial Radio Policy to which the Commission believes the licensee is referring do not apply to CJRN. The Commission also notes that the news and sportscasts that were broadcast by CJRN are similar to those typically broadcast by numerous mainstream commercial stations in the Niagara Falls region and would otherwise be available to visitors to the region. Further, the Commission notes that the information in the broadcasts in question related to events outside the Niagara Falls region. The Commission finds that this programming was not solely directed to visitors to Niagara Falls and cannot be defined as tourist information.
19. With respect to the broadcast of promotions, the Commission notes that CJRN only broadcast promotions for radio stations that, at the time, were under the control of Mr. Andrew Ferri, who also controls Radio 710, and not for any other locally licensed broadcaster in the Niagara Falls region. Accordingly, the Commission is not convinced by the licensee's explanation that it was providing tourist information.
20. As regards the program "Reflections on Islam" broadcast during the week of 14 to 20 August 2011, the Commission considers that the broadcast of this program

was contrary to the requirement that the station broadcast only pre-recorded tourist information directed to visitors to Niagara Falls.

21. The Commission notes the licensee's comment that CJRN had broadcast this program for many years without questions or concerns. The Commission notes that in the absence of a complaint, the dates for which it requests logger tapes are generally chosen at random. As such, due to the randomness of the chosen monitoring periods and the fact that the program was only broadcast during the time of Ramadan, the monitoring in August 2011 was the first instance in which the program was noted by the Commission. The Commission notes that notwithstanding this approach, it is nevertheless the responsibility of the licensee to ensure that the programming it broadcasts complies with its conditions of licence and the Regulations at all times.
22. In light of the above, the Commission finds that Radio 710 failed to comply with its condition of licence 1 on two separate occasions: first, when it broadcast news, sports and promotions during the week of 18 to 24 April 2010 and second, when it broadcast the program "Reflections on Islam" during the week of 14 to 20 August 2011.
23. The Commission notes that this constitutes the second consecutive licence term in which the licensee has been found in non-compliance with this condition of licence. The Commission also considers that "Reflections on Islam" is very similar to the type of programming for which the licensee was found in non-compliance in the previous licence term.

Submission of logger tapes, self-assessment report and music list and responses to Commission requests for information

24. Sections 8(5) and 8(6) of the Regulations require licensees to retain a clear and intelligible tape recording or other exact copy of all matter broadcast (i.e. logger tapes) and to provide this material to the Commission forthwith upon request. Sections 9(3)(a) and (b) of the Regulations require licensees to provide a self-assessment report and a list of the musical selections in the order in which they are broadcast by the licensee. Finally, section 9(4) requires licensees to respond to Commission requests for information relating to adherence to their regulatory obligations.
25. On 25 August 2011, the Commission requested that the licensee file the logger tapes, music lists and program logs for the broadcast week of 14 to 20 August 2011 by 12 September 2011.
26. The Commission received a package on 12 September 2011 that included a logger CD and program logs, but no music list or details of spoken word programs, despite an indication that all of the requested materials were enclosed. During a follow-up phone call, the licensee indicated that CJRN did not broadcast music or spoken word programs and therefore believed that there was no need for a list.
27. Upon review of the materials received, Commission staff noted that the logger CD failed to function properly and requested a replacement CD. When this replacement

was received by the Commission on 8 October 2011, it was missing the programming for 14 and 15 August 2011. A review of the material received also disclosed the broadcast of the spoken-word program “Reflections on Islam.” In light of these discoveries, on 21 October 2011, the Commission requested that the licensee file by 31 October 2011 the logger tapes for 14 and 15 August 2011, the music list, a self-assessment report and a list that included the time of broadcast of all musical selections and spoken word programs, including “Reflections on Islam.”

28. The licensee did not respond until 12 January 2012. In its response, it indicated that it had indeed broadcast spoken word programs and music selections, but failed to supply a list of these programs and music selections, their time of broadcast or the self-assessment report as requested. With respect to the logger tapes, the licensee noted that the logger tapes for 14 and 15 August 2011 were not available due to the reallocation of staff to a new broadcasting company as a result of the sale of its sister stations CFLZ-FM and CKEY-FM. According to the licensee, although these stations are located in the same facility, it appears that instructions were not in place to ensure that the staff of CFLZ-FM and CKEY-FM checked the logger for CJRN at the same time as the loggers for those stations. The licensee noted that this problem had been corrected as staff had been informed of the importance and necessity of the information in the loggers and that the licensee had contracted with Haliburton Broadcast Group, the licensee of the stations with which it shares facilities, to look after its loggers. The licensee added that it would be able to supply a clear and intelligible tape recording or other exact copy of all matter broadcast for the missing days to the Commission as all items were pre-recorded. It undertook to do so by 31 January 2012. The licensee filed a data CD with the Commission on 1 February 2012 containing a program index and various program segments.
29. At the 19 June public hearing, the licensee indicated it had been led to believe by a member of its staff that the missing logger tapes had been supplied. It again undertook to provide a copy of the recorded material for 14 and 15 August 2011. The licensee filed another data CD with the Commission on 28 June 2012. The material received was the same as that received on 1 February 2012, with the exception that it did not include the pre-recorded segments of “Reflections on Islam.”

Commission’s analysis and decision

30. With respect to the logger tapes, the Commission notes that the material provided by the licensee on 1 February 2012 and again on 28 June 2012 pursuant to its undertaking at the 19 June public hearing contained various programs segments. However, the Commission finds that the CD does not represent a clear and intelligible tape recording or other exact copy of matter broadcast on 14 and 15 August 2011 as required pursuant to the Regulations. The Commission also notes that neither the CD nor the program index that was included contains the information necessary to identify the sequence or when the programming was broadcast such that it might qualify as an exact copy of matter broadcast. Accordingly, the Commission finds Radio 710 in non-compliance with sections 8(5) and 8(6) of the Regulations as regards the provision of logger tapes.

31. With respect to the self-assessment report and music list, the Commission notes that the licensee failed to provide these materials despite multiple requests. Accordingly, the Commission finds Radio 710 in non-compliance with sections 9(3)(a) and (b) of the Regulations relating to the provision of a self-assessment report and music list at the Commission's request.
32. Given that the instances of non-compliance relating to the filing of logger tapes, a music list and a self-assessment report have been assessed in relation to sections 8(5), 8(6) and 9(3)(a) and (b) of the Regulations, the Commission is of the view that it is unnecessary to make a finding with respect to section 9(4) of the Regulations.

Submission of annual returns

33. Section 9(2) of the Regulations requires licensees to file, on or before 30 November of each year, their annual return for the broadcast year ending the previous 31 August.
34. The Commission notes that the annual returns for the 2008-2009 and 2009-2010 broadcast years were filed late, i.e. on 15 December 2009 for the 2008-2009 broadcast year and on 3 January 2011 for the 2009-2010 broadcast year.
35. In response to questions regarding the apparent non-compliance, the licensee stated that it had relied on outside service providers for the information to file its annual returns in the past and that these service providers took longer to process the information than expected. At the hearing, the licensee further stated that the delay in filing its annual returns was due in large part to a general manager who at that time was responsible for the operations of the station. Going forward, the licensee stated that its annual returns would be handled in-house.

Commission's analysis and decision

36. The Commission finds Radio 710 in non-compliance with section 9(2) of the Regulations.
37. The Commission notes that the requirement to file annual returns, the form to be used and the required filing date are clearly indicated in the Regulations.
38. The Commission also notes that it is the responsibility of the licensee to comply with the requirements of the Regulations and to establish the appropriate procedures to ensure full compliance. In this case, the Commission finds that the licensee did not take the appropriate measures to ensure the station's compliance with the requirement to file annual returns.

Regulatory action

39. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to dealing with radio stations found in non-compliance. The Commission noted in particular that each instance of non-compliance will be evaluated in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The

Commission also noted that it will consider the circumstances leading to the non-compliance in question, the licensee's arguments and the measures taken to rectify the situation.

40. The Commission considers that the issues of non-compliance described above, when taken cumulatively, are extremely serious both due to the nature of the non-compliance and its recurrence.
41. As regards the nature of the non-compliances, the Commission considers that they relate to fundamental aspects of the broadcasting regulatory system and of Radio 710's licence. In particular, because the Commission is charged with the supervision and regulation of the Canadian broadcasting system, it must at all times be in a position to obtain information from licensees to adequately perform its duties. The requirements to submit logger tapes, self-assessment reports and music lists, file annual returns and respond to Commission requests for information in a timely manner are therefore fundamental to the Commission's ability to monitor a station's performance and verify its compliance with the Regulations and with individual conditions of licence. Further, when the material requested is not filed or is not filed in a timely manner, this affects the ability of the Commission to independently confirm a licensee's adherence to these regulatory obligations. These filings also become important indicators as to whether the licensee has the willingness, ability and knowledge necessary to bring itself into compliance and maintain such compliance.
42. Moreover, the Act declares that radio frequencies are public property. The ability of a licensee to adhere to terms and conditions of licence related to its nature of service are essential to the Commission's continued confidence that the licensee is contributing to the system in the manner for which it was licensed and making appropriate use of the frequency. Accordingly, the failure to adhere to such terms and conditions is a serious matter.
43. As mentioned above, the recurrence of Radio 710's non-compliances are also cause for concern. The Commission notes that despite its having reminded the licensee in Broadcasting Decision 2009-515 that the licensee is ultimately responsible for all of the programming it broadcasts and to ensure that it complies with its conditions of licence, this is the second consecutive licence term in which the licensee has been found in non-compliance with respect to its regulatory obligations. Furthermore, in this licence term alone, the licensee has twice been found in non-compliance with the same regulatory obligation for which it was found non-compliant in the previous licence term.
44. In assessing the appropriate regulatory action to take under the circumstances and in assessing the licensee's understanding of its responsibilities and the seriousness with which it takes them, the Commission has taken into account the licensee's responses to the non-compliance both in writing and at the hearing. As discussed below, the Commission considers that the responses of Radio 710 call into question the credibility of the licensee as regards its commitment to its regulatory obligations.

Circumstances and explanations for the non-compliance

45. With respect to the instances of non-compliance over the licence term, the Commission is gravely concerned by the general lack of oversight on the part of the licensee and in particular by its lack of awareness of its regulatory obligations, what is being broadcast on its station and what is being done to fulfill its regulatory obligations. The Commission is also concerned that the licensee does not respect the Commission's authority or take its licence seriously.
46. It is incumbent upon licensees to be aware of their regulatory obligations in order to ensure compliance. Radio 710's responses to its non-compliance have not convinced the Commission that it has the requisite knowledge to ensure compliance. For example, with respect to the broadcast of sports and news programming, the licensee indicated that it believed it was subject to a policy which required it to broadcast this material, despite a clear condition of licence restricting this type of programming on CJRN. This demonstrates that the licensee is unaware of the nature of its licence, as well as which policies and regulatory obligations apply and do not apply to it and which, such as conditions of licence, take precedence.
47. The Commission also notes the licensee's unawareness of the content of its programming, as demonstrated by its contradictory comments regarding whether it had broadcast music and spoken word programming, as well as its repeated non-compliance with its condition of licence 1. Despite the Commission's reminder to the licensee of its ultimate responsibility for its programming and the licensee's previous promises regarding compliance with this condition of licence, the licensee has again been found in non-compliance with this fundamental component of its licence. The licensee's lack of oversight is further demonstrated by its statement that it believed that its staff had already provided the logger tapes. The Commission notes that although a licensee may delegate tasks to its staff, the licensee is ultimately responsible for its compliance and has an obligation to ensure that the tasks are appropriately completed.
48. In addition, the Commission notes that the licensee failed to take responsibility for its non-compliance. In particular, rather than acknowledging its role in the non-compliance, the licensee blamed its staff and the staff of other radio stations for the missing logger tapes and the general manager and an outside service for the late filing of annual returns.
49. In the Commission's view, the cumulative effect of this behaviour is to indicate a lack of oversight on the part of the licensee with respect to the fulfilment of its regulatory obligations because the licensee is unaware of what its obligations are, what is actually taking place and what is being done to fulfill those obligations.
50. Furthermore, the Commission notes the inability and seeming unwillingness of the licensee to comply with certain of its regulatory obligations in a timely manner. The fact that the self-assessment report and music list were never filed, despite an acknowledgement by the licensee that it had broadcast spoken word programming

and musical selections, and the fact that it took the licensee some 4 ½ months from the date the logger tapes were first requested to inform the Commission of the reasons it had not provided these tapes not only indicate a lack of oversight, but also suggest a disregard for the Commission's authority to regulate the licensee's conduct.

51. The licensee's lack of respect for the Commission's authority is similarly demonstrated by the licensee's response to being called to the 19 June hearing. In particular, the Commission notes that despite its having advised the licensee on 18 April 2012 of the date of the hearing and that it may be required to appear,² the Commission was only advised on 5 June 2012 that Mr. David Dancy, who the licensee acknowledged was in the best position to respond to the Commission's questions and concerns, would not be available to appear at the hearing on the date scheduled due to a real-estate transaction. Given Mr. Dancy's unavailability, the licensee asked to have the item moved to 22 June or rescheduled to another hearing. Mr. Dancy had known about this conflict when notification was first given and the Commission considers that he had adequate time to arrange his schedule accordingly. Nevertheless, the Commission rescheduled the application to the end of the hearing in an attempt to facilitate Mr. Dancy's appearance. However, Mr. Dancy still did not attend. The Commission considers that a responsible licensee in Radio 710's position that took its licence seriously and respected the Commission's authority would have taken every necessary step to ensure that the people who could best represent it would be available in the event that it was required to appear at the public hearing.

Measures taken to bring itself into compliance

52. With respect to the measures taken by the licensee to bring itself into compliance, the Commission notes that several instances of non-compliance remain unrectified. In particular, the licensee was unable to file the logger tapes for 14 and 15 August 2011 and failed to file the self-assessment report and music lists as requested.
53. Going forward, the Commission notes the proposals of the licensee to prepare its annual returns in-house, to more closely scrutinize the content of its programming and to seek Commission approval before broadcasting anything it considers questionable. However, as noted, the Commission is concerned by the licensee's lack of oversight of its operations and is not convinced that the proposed measures satisfactorily address this concern or that these measures will achieve better results. With respect to programming, given that the promises made by the licensee in this regard as part of the corporate reorganization have gone unfulfilled and in light of the licensee's lack of knowledge of its regulatory obligations, the Commission is not convinced that the situation will not repeat itself. Although the licensee has promised an increased level of scrutiny, the Commission also questions why such increased scrutiny was not implemented when the licensee was previously found in non-compliance. Instead the Commission notes that Radio 710 took the opposite course of action, committing repeated and further acts of non-compliance.

² The licensee was notified on 31 May 2012 that it would be required to appear.

Conclusion

54. Radio 710 has shown a history of repeated non-compliance and disregard for its regulatory obligations over two consecutive licence terms. The Commission is gravely concerned about the licensee's willingness and ability to bring itself into compliance. Given all of the above, the Commission is unconvinced as to the seriousness with which the licensee takes its regulatory obligations. The Commission is similarly not convinced that the licensee's attitude toward its regulatory obligations will change going forward.
55. The Commission has reviewed the various measures it may adopt to ensure that licensees meet their obligations where it finds that they are in non-compliance, such as mandatory orders, short-term renewal, suspension and non-renewal of the licence. Given the seriousness of the non-compliance and its recurrence, the inability of Radio 710 to implement the measures necessary to ensure ongoing compliance and the lack of confidence on the part of the Commission that the lack of oversight will change going forward, the Commission is not convinced that a mandatory order or short-term renewal would be effective. The Commission is similarly not convinced that a suspension would be effective as there is no evidence to suggest that the licensee would not revert to its present practices. In light of the above, the Commission is of the view that non-renewal of the licence is the only appropriate measure in this case.
56. Accordingly, the Commission **denies** the application by Radio 710 to renew the broadcasting licence for the tourist radio programming undertaking CJRN Niagara Falls. As such, the licensee must cease broadcasting by no later than the end of the broadcast day on 30 November 2012.

Secretary General

Related documents

- *Administrative renewals*, Broadcasting Decision CRTC 2012-341, 22 June 2012
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2012-224, 18 April 2012, as amended by Broadcasting Notice of Consultation CRTC 2012-224-1, 11 May 2012
- *Administrative renewals*, Broadcasting Decision CRTC 2011-557, 31 August 2011, as amended by *Administrative renewals – Corrections*, Broadcasting Decision CRTC 2011-557-1, 23 September 2011
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *CJRN Niagara Falls – Acquisition of Assets (corporate reorganization)*, Broadcasting Decision CRTC 2009-515, 21 August 2009
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006