



Broadcasting Decision CRTC 2012-659

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Mass-Média Capitale inc.
Québec, Quebec

Applications 2011-1513-9 and 2011-1518-9

CJNG-FM Québec – Licence amendment and technical change

*The Commission **approves** an application to change the technical parameters of the low-power English-language tourist radio station CJNG-FM Québec by increasing the average effective radiated power of its transmitter.*

*The Commission **denies** the application to amend the broadcasting licence for the above-mentioned radio station in order to modify the station's programming.*

The applications

1. The Commission received two applications by Sortir FM inc., now Mass-Média Capitale inc. (collectively, MMC).¹ In the first application, the licensee requested a change to the authorized contours of the low-power English-language tourist radio programming undertaking CJNG-FM Québec by increasing the average effective radiated power (ERP) of its transmitter from 20 to 419 watts (maximum ERP from 100 to 1,000 watts, with an effective height of antenna above average terrain increasing from 72.6 to 132.9 metres). All other technical parameters would remain the same.
2. In the second, application the licensee requested an amendment to the station's broadcasting licence to diversify the station's programming by including the broadcast of events and performances taking place in the Québec region, such as shows produced as part of festivals and popular events in entertainment facilities, restaurants and bars.
3. In regard to the requested technical changes, the licensee stated that CJNG-FM has never been profitable due to the low power of its current parameters. It indicated that its current contours are insufficient to adequately cover the Québec tourist region.

¹ On 1 October 2011, Sortir FM inc. amalgamated with Mass-Média Capitale inc. and Les Consultants Net Créations inc., to continue under the name Mass-Média Capitale inc.

4. MMC claimed that the purpose behind these two applications for amendments is to ensure the station's survival. The Commission considers that these two applications are related; accordingly they will be addressed together in the present decision.

Intervention

5. The Commission received an intervention in regard to these applications from Astral Media Radio inc. (Astral). Astral did not oppose the application to change the technical parameters, but opposed the application to amend the station's programming.
6. In its intervention, Astral indicated that the CJNG-FM's financial difficulties do not appear to be related to the nature of the station's programming, but more to technical problems affecting the reception of its signal. According to Astral, approval of the programming amendment would permit CJNG-FM to become a station with a strong musical component, which would run counter to its status as a tourist radio station and its conditions of licence, without having to meet any of the requirements involved in operating a music station.
7. Astral further indicated that the requested programming amendment would be contrary to two of CJNG-FM's current conditions of licence and would result in the station's mandate straying from that of a tourist station.

Applicant's reply

8. In its reply to Astral, MMC indicated that its financial difficulties are not related solely to technical problems regarding signal reception, but also to programming issues and production costs. MMC further indicated that without the possibility of recording and broadcasting events in pre-recorded form, there is a risk that Anglophone tourist radio in Québec will shut down.
9. In addition, MMC specified that the proposed amendments would not be contrary to any of its current conditions of licence given that the performances and events broadcast would be pre-recorded.
10. It further indicated that the concept of "tourist information," which is at the heart of its conditions of licence, must allow it to provide the audience with tourist products containing pre-recorded audio content. MMC argued that the Commission has never defined the expression "tourist information" so as to be able to impose specific limits.
11. According to MMC, the pre-recorded broadcast of a tourist event on a tourist radio station falls under "tourist information."
12. In regard to the condition of licence requiring the licensee not to broadcast musical selections, except as incidental background music, MMC indicated that the station would not broadcast any musical selections in the true sense, but rather

pre-recorded tourist events. It claimed that it would be clearly impossible to control the percentage of musical content drawn from either tourist events or performances, as that percentage would be the responsibility of the organizers of such events. MMC also stated that it is not its intention to turn CJGN-FM into a conventional radio station that would broadcast popular music CDs from its studios, as Astral currently does with its NRJ network.

13. The public record for these applications can be found on the Commission's web site at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decisions

14. After examining the public record for these applications in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:

- In regard to the application for the changes to the technical parameters:
 - Is there a demonstrated economic need justifying the proposed changes?
 - Would the proposed changes improve the CJNG-FM's coverage?
 - Would the proposed changes have an undue negative impact on the stations operating in the Québec radio market?
- In regard to the application for a programming amendment:
 - Would approval of the amendment have an undue negative impact on the stations operating in the Québec radio market?
 - Would approval of the amendment run counter to CJNG-FM's tourist radio station mandate, as well as its conditions of licence?
 - Is there a demonstrated economic need justifying the requested amendment?

Changes to the technical parameters

Is there a demonstrated economic need justifying the proposed changes?

15. The Commission notes that when a licensee files an application for a change to its technical parameters, the licensee must demonstrate that there is an economic or technical need justifying the requested change. In its application, the licensee indicated that the proposed changes are necessary for the survival of the station.

16. The Commission notes that CJNG-FM generated relatively low revenues from 2008-2009 to 2011-2012. Further, the station posted negative profit before interest and taxes margins for each of those four broadcast years.
17. The Commission further notes MMC's submission that its application to amend CJNG-FM's technical parameters stems from the financial difficulties that the station is currently facing. The Commission also notes that the financial projections filed as part of the application to amend the station's technical parameters show that revenues should increase over the next few years, should the Commission approve the changes to the station's technical parameters, and that the station should even attain profitability in its first year of operations following the changes.
18. In light of the above, the Commission concludes that the financial situation of CJNG-FM is fragile and that the application to change CJNG-FM's technical parameters is economically justified.

Would the proposed changes improve CJNG-FM's coverage?

19. In its application to amend CJNG-FM's authorized contours, the licensee stated that the station's signal is too weak to be picked up in the tourist areas (e.g. Vieux-Québec, Upper Town, Cap-Diamant).
20. As indicated on the contour map filed as part of its application, the increase in ERP should improve the station's coverage on the major routes (for example, highways 20 and 40, west and south-west of the downtown area), as well as the quality of the signal in the downtown area.

Would the proposed changes have an undue negative impact on the stations operating in the Québec market?

21. As indicated above, CJNG-FM is a tourist radio station that operates in a niche English-language market and that generates only a low level of revenue. The licensee stated that approval of the application to change CJNG-FM's technical parameters would enable the station to significantly increase its revenues when compared to those currently generated. In this regard, the Commission notes that those revenues would nevertheless remain modest when compared to the total revenues generated in the entire market. Moreover, the Commission notes that Astral, the only intervener to this proceeding, indicated that it was not opposed to the application to change the technical parameters, as proposed by MMC.
22. The Commission considers that the licensee has justified its request to change the station's technical parameters in order to ensure coverage of the Québec tourist region. The Commission notes that it did not receive any interventions opposing the request to change the station's technical parameters.

Commission's decision

23. In light of the above, the Commission considers that it would be appropriate to approve the application to change CJNG-FM's technical parameters, as proposed by MMC. It considers that approval of these changes would permit CJNG-FM to increase its revenues over the coming years, thereby contributing to ensuring its survival.

Programming amendment

Would approval of the amendment have an undue negative impact on the stations operating in the Québec radio market?

24. The Commission notes that the mandate of MMC's two tourist radio stations (CJNG-FM and CKJF-FM Québec) is to broadcast content exclusively offering tourist information in the Québec radio market, and that no other radio station offers this type of service in that market. As such, this is a niche exploited only by MMC.
25. The Commission also notes that the nature of CJNG-FM's target audience, which is composed mainly of Anglophone residents and tourists, is not specifically sought after by other Québec commercial radio stations, which all operate in the French language. The Commission considers that these factors make the target audience less attractive to advertisers, thereby reducing the risk of revenue loss for all of the other radio stations in this market.
26. Finally, the Commission notes that Astral, the only intervener in this proceeding, only opposed the amendment to CJNG-FM's programming. However, the arguments presented by Astral only addressed the station's nature of service and conditions of licence, and did not raise any concerns regarding potential loss of revenue should the application be approved.

Would approval of the amendment run counter to CJNG-FM's tourist radio station mandate, as well as its conditions of licence?

Regulatory framework and MMC's proposal

27. The Commission notes that it generally imposes the same three conditions of licence on a tourist radio station as it has done, with certain minor amendments, in the case of CJNG-FM, as set out in Broadcasting Decision 2006-53. These conditions of licence are generally worded as follows:
 1. The licensee shall use the station solely for the purpose of broadcasting pre-recorded messages providing tourist information pertaining to tourist attractions and activities.
 2. The licensee shall not broadcast more than six minutes of advertising material per clock hour.

3. The licensee shall not broadcast musical selections, except as incidental background music.
28. As part of its application to amend its programming, MMC proposed the addition of the following condition of licence to CJNG-FM's broadcasting licence, without requesting that the above-noted conditions of licence be deleted:

The licensee is authorized to broadcast pre-recorded events and performances produced as part of festivals and popular events in entertainment facilities, restaurants and bars, as long as these activities are related to recreational tourism and culture.

Commission's analysis

29. Condition of licence 1 above, as it applies to this station, specifies that the station shall broadcast only pre-recorded messages providing tourist information pertaining to tourist attractions and activities in the Québec region. Although MMC argued that the Commission has never clearly defined what constitutes tourist information, a reading of CJNG-FM's conditions of licence sets out the station's operational limits.
30. The Commission notes that the Petit Robert (French-language) dictionary defines "message" as [translation] "information or news transmitted to someone," and "renseignement" as [translation] "information or precision given about something."² Accordingly, to comply with condition of licence 1, CJNG-FM is required broadcast information, news and/or facts regarding tourist attractions and activities in the Québec area.
31. The Commission notes that Broadcasting Order 2011-176, which applies to certain radio stations that provide travellers with a variety of tourist information, clearly indicates that this type of programming consists of information on traffic, weather conditions, highway construction and closures, conditions on bridges and in mountain passes, as well as of information, broadcast without consideration, relating to attractions of interest to tourists.
32. In addition, in Broadcasting Decision 2009-515, the Commission confirmed that some of the information that was broadcast by the tourist information radio station CJRN Niagara Falls and that was not addressed uniquely to visitors to Niagara Falls could not be considered tourist information. Consequently, in Broadcasting Decision 2012-550, the Commission did not renew CJRN's broadcasting licence in part because the station, by not broadcasting programming exclusively targeting tourists, strayed from its mandate as a tourist information radio station.

² In its arguments, the licensee refers to the French-language version of CJNG-FM's conditions of licence.

33. In the Commission's view, there is nothing in CJNG-FM's current conditions of licence to suggest that the Commission intended, in granting the licence to MMC, to allow it to broadcast, either live or in pre-recorded form, events or shows taking place in the Québec region, such as those produced in the context of festivals or popular events in entertainment facilities, restaurants or bars. Specifically, the Commission notes that these events and shows cannot be considered as content that is addressed only to visitors and tourists in the Québec region.
34. Moreover, the Commission notes the CJNG-FM, by condition of licence, cannot broadcast musical selections, except as background music. However, the Commission considers that MMC's new proposal, which would authorize CJNG-FM to broadcast excerpts of events or of music performances, would inevitably violate this condition of licence. Furthermore, the condition of licence proposed by MMC does not contain any restrictions either in regard to its programming intentions for CJNG-FM or in regard to the types of shows that can be broadcast. The Commission is therefore of the view that approval of this proposal would indirectly introduce a new music service to the Québec radio market.

Commission's decision

35. Although Commission is of the view that approval of the programming amendment proposed by the licensee would only have a minimal financial impact on the commercial stations operating in the Québec radio market, it considers that the condition of licence proposed by the licensee runs counter to two of the three conditions of licence currently imposed on CJNG-FM, and would thereby extend its mandate from that of a tourist radio station. Accordingly, the Commission considers that it would not be appropriate to approve the application to amend CJNG-FM's programming, as filed by MMC.
36. The Commission notes that when the licence was granted for CJNG-FM, it did not contemplate the broadcast of "cultural" programming, as proposed by the licensee in the present application, but rather the broadcast of tourist information, as defined above, pre-recorded and focussing on tourist activities, attractions and information.

Is there a demonstrated economic need justifying the requested amendment?

37. In regard to the economic aspect of the programming amendment, the Commission notes MMC's argument to the effect that the programming amendment is, in its view, necessary to ensure CJNG-FM's financial viability. The Commission notes, however, that MMC did not provide any financial projections justifying the proposed programming amendment for the station.

Conclusion

38. In light of the above, the Commission **approves** the application by Mass-Média Capitale inc. to change CJNG-FM Québec's authorized contours by increasing the average ERP of its transmitter from 20 to 419 watts (maximum ERP from 100 to

1,000 watts, with an effective height of antenna above average terrain increasing from 72.6 to 132.9 metres).

39. Further, the Commission **denies** the application by Mass-Média Capitale inc. to amend CJNG-FM Québec's broadcasting licence to modify the station's programming.

Reminder

40. The Commission reminds the licensee that, pursuant to section 22(1) of the *Broadcasting Act*, this authority will only be effective when the Department of Industry notifies the Commission that its technical requirements have been met and that a broadcasting certificate will be issued.

Secretary General

Related documents

- *CJRN Niagara Falls – Non-renewal of licence*, Broadcasting Decision CRTC 2012-550, 10 October 2012
- *Amendments to the Exemption order for low-power radio programming undertakings providing information about traffic, weather conditions, highway construction and closures, conditions on bridges and in mountain passes, and information, broadcast without consideration, relating to attractions of interest to tourists*, Broadcasting Order CRTC 2011-176, 11 March 2011
- *CJNR Niagara Falls – Acquisition of assets (corporate reorganization)*, Broadcasting Decision CRTC 2009-515, 21 August 2009
- *Two low-power tourist FM stations in Québec, Quebec*, Broadcasting Decision CRTC 2006-53, 2 March 2006

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