



Broadcasting Decision CRTC 2013-671

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Route reference: 2013-360

Ottawa, 11 December 2013

My Broadcasting Corporation

Peterborough, Ontario

Application 2013-0786-9, received 20 May 2013

Public hearing in the National Capital Region

3 October 2013

CJMB-FM Peterborough – Acquisition of assets

*The Commission **approves** an application by My Broadcasting Corporation for authority to acquire from 4352416 Canada Inc. the assets of the English-language specialty radio station CJMB-FM Peterborough and for a broadcasting licence to continue the operation of the station.*

The application

1. The Commission received an application by My Broadcasting Corporation (MBC) for authority to acquire from 4352416 Canada Inc. (4352416 Canada) the assets of the English-language specialty radio station CJMB-FM Peterborough, Ontario, and for a broadcasting licence to continue the operation of the undertaking under the same terms and conditions as those in effect under the current licence.
2. MBC is jointly controlled by John Pole and Andrew Dickson.
3. The Commission notes that following the transaction, MBC would become the licensee of CJMB-FM.
4. The Commission received one intervention opposing the application from Pineridge Broadcasting Inc. (Pineridge), to which the applicant replied. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decision

5. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues that it must address are the following:
 - application of the Tangible Benefits Policy;
 - unfulfilled tangible benefits resulting from a previous acquisition of assets;

- non-compliance with respect to contributions to Canadian content development (CCD); and
- spoken word programming.

Application of the Tangible Benefits Policy

6. Because the Commission does not solicit competing applications for authority to transfer the ownership or control of radio, television and other programming undertakings, the onus is on the applicant to demonstrate that the benefits proposed in the application are commensurate with the size and nature of the transaction.
7. In Public Notice 1998-41, as reaffirmed in Broadcasting Public Notice 2006-158, the Commission stipulated that it would forego tangible benefits requirements for unprofitable radio stations. Given that the licensee of CJMB-FM is bankrupt and that the station has not been profitable over the least three years, the Commission considers it appropriate to not require tangible benefits for this transaction.

Unfulfilled tangible benefits resulting from a previous acquisition of assets

8. In Broadcasting Decision 2009-383, the Commission approved an application by Andy McNabb, on behalf of a corporation to be incorporated (now 4352416 Canada), to acquire the assets of the present undertaking. In that decision, the Commission required the applicant to pay tangible benefits. The Commission notes that a balance of \$8,415 remains to be paid.
9. The Commission notes that MBC committed to pay that balance by 31 August 2014. A **condition of licence** to this effect is set out in the appendix to this decision.

Non-compliance with respect to contributions to Canadian content development

10. The licensee is currently subject to the following condition of licence relating to Canadian talent development (now called CCD) contributions:

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.

11. According to Commission records, the licensee must still expend \$250 of the above amount.

12. In addition, in the 2011-2012 broadcast year, the Commission notes that the licensee failed to make the basic CCD contribution as set out in section 15 of the *Radio Regulations, 1986*, resulting in an additional \$500 shortfall. Accordingly, the total CCD shortfall for the station amounts to \$750.
13. MBC indicated that it was unable to determine the circumstances of the non-compliance due to a lack of financial information from 4352416 Canada. MBC added that going forward, two senior managers of the company would monitor the appropriate expenditures throughout the year. It further indicated that it is committed to paying the CCD amounts still outstanding and to ensuring full compliance with all conditions and regulations.
14. The Commission is satisfied with MBC's commitment to expend the CCD shortfall totalling \$750 and has imposed a **condition of licence** to this effect in the appendix to this decision.

Spoken word programming

15. In its intervention, Pineridge stated that CJMB-FM does not have the authority to broadcast more than 50% spoken word programming during the broadcast week and to change its format to a sports talk format.
16. In this regard, the Commission notes that the licensee is required by condition of licence to operate the station within the Specialty format as defined in Public Notice 2000-14 and Public Notice 1995-60. In Public Notice 1995-60, the Commission stated that, to operate within the Specialty format, a station would need to meet one or more of the following criteria: the language of broadcast is neither English nor French; more than 50% of the broadcast week is devoted to spoken word; and less than 70% of the music broadcast is from subcategory 21 (Pop, Rock and Dance) and/or subcategory 22 (Country and Country-oriented). In the present case, the Commission concludes that in allocating more than 50% of its programming during the broadcast week to spoken word programming, the service satisfies the definition of Specialty format and is therefore in compliance with its associated condition of licence.

Regulatory measures

17. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to non-compliance by radio stations. Specifically, the Commission indicated that each instance of non-compliance would be evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The Commission also indicated that it would consider the circumstances of the non-compliance, the arguments provided by the licensee, and the measures taken to rectify the situation.
18. The Commission notes MBC's explanation as to its inability to determine the circumstances leading to the CCD shortfall. The Commission considers that, notwithstanding this explanation, there remains a shortfall of \$750 with respect to CJMB-FM's CCD obligations. Moreover, the Commission notes that this is a repeated

instance of non-compliance with respect to CCD obligations for CJMB-FM and that the station was given a short licence term in Broadcasting Decision 2010-893.

19. The current licence for the station will expire 31 August 2014. The Commission must therefore determine the appropriate length of the next licence term. Consistent with the revised approach set out in Broadcasting Information Bulletin 2011-347, and taking into account the measures taken by MBC to correct the shortfalls mentioned above, the Commission considers that a short licence term would be appropriate.

Conclusion

20. In light of all of the above, the Commission **approves** the application by My Broadcasting Corporation for authority to acquire from 4352416 Canada Inc. the assets of English-language specialty radio programming undertaking CJMB-FM Peterborough.
21. Upon surrender of the current licence issued to 4352416 Canada Inc., the Commission will issue a new broadcasting licence to My Broadcasting Corporation, which will expire 31 August 2018. The terms and **conditions of licence** for this station are set out in the appendix to this decision.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2013-360, 2 August 2013
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *CJMB-FM Peterborough – Licence renewal*, Broadcasting Decision CRTC 2010-893, 30 November 2010
- *CKKK-FM Peterborough – Acquisition of assets*, Broadcasting Decision CRTC 2009-383, 26 June 2009
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Revised content categories and subcategories for radio*, Broadcasting Public Notice CRTC 2000-14, 28 January 2000
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998
- *A Review of Certain Matters Concerning Radio*, Broadcasting Public Notice CRTC 1995-60, 21 April 1995

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

Appendix to Broadcasting Decision CRTC 2013-671

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

Terms

The licence will expire 31 August 2018.

Conditions of licence

1. The licensee shall adhere 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 licensee shall operate the station within the Specialty format as defined in *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995, and *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010, 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 devote more than 50% of each broadcast week to the broadcast of spoken word programming.
7. In addition to the basic annual contribution to Canadian content development set out in section 15 of the *Radio Regulations, 1986*, the licensee shall expend, by no later than 31 August 2014, \$750 to the promotion and development of Canadian content. The licensee shall allocate this amount to a party or initiative fulfilling the definition of an eligible initiative set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.
8. The licensee shall expend, by no later than 31 August 2014, \$8,415 remaining from the tangible benefits commitment imposed in *CKKK-FM Peterborough – Acquisition of assets*, Broadcasting Decision CRTC 2009-383, 26 June 2009. This amount shall be allocated as follows:

- \$4,207 to Radio Starmaker Fund;
- \$2,805 to FACTOR or MUSICACTION; and
- \$1,403 to the Peterborough Musicfest.

Encouragement

In accordance with *Implementation of an employment equity policy*, Broadcasting Public Notice CRTC 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.