



Broadcasting Decision CRTC 2014-641 and Broadcasting Orders CRTC 2014-642 and 2014-643

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Route reference: 2014-472

Ottawa, 11 December 2014

3553230 Canada inc.

Saint-Constant, Quebec

Application 2014-0484-7, received 25 May 2014

Groupe Médias Pam inc.

Saint-Constant, Quebec

Application 2014-0624-9 received 2 July 2014

Public hearing in the National Capital Region

12 November 2014

CJMS Saint-Constant – Acquisition of assets, licence renewal and maintaining of broadcasting orders

*The Commission **approves** the application by Groupe Médias Pam inc. (Groupe Médias) for authority to acquire the assets of the French-language commercial AM radio station CJMS Saint-Constant from 3553230 Canada inc.*

Given the seriousness and recurrence of the instances of non-compliance and the fact that this is the fourth consecutive licence term in which CJMS has been found in non-compliance with its regulatory requirements, the licence to be issued to Groupe Médias will be for a short term and will expire on 31 August 2017. Further, the Commission maintains Broadcasting Orders 2014-175 and 2014-176 relating to CJMS in light of their recent imposition.

The issuance of a new, short-term licence will allow for an earlier review of Groupe Médias' compliance with its regulatory obligations.

The Commission considers that this transaction is in the public interest and that it will allow CJMS to remain in the Saint-Constant market to the benefit of listeners and local advertisers.

Background

1. In a letter dated 4 July 2013, the Commission informed 3553230 Canada inc. (3553230 Canada), the current licensee of the French-language commercial AM radio station CJMS Saint-Constant, of its apparent non-compliance with sections 8(1), 8(5), 8(6) and 9(4) of the *Radio Regulations, 1986* (the Regulations) regarding the filing of

logger tapes and program logs and the requirement to provide all relevant information at the Commission's request.

2. In Broadcasting Notice of Consultation 2013-448-1, the Commission indicated that since December 2012, it had attempted on several occasions to obtain from 3553230 Canada the logger tapes and program logs for CJMS to examine them in the context of the renewal of the station's licence, which was to expire on 31 August 2014.¹ Noting that this was the fourth consecutive licence term in which the licensee was in non-compliance, the Commission requested that it appear at the 5 November 2013 public hearing.
3. Following that public hearing, the Commission published Broadcasting Decision 2014-174 and Broadcasting Orders 2014-175 and 2014-176, which directed 3553230 Canada to comply at all times with sections 8(1), 8(5), 8(6) and 9(4) of the Regulations. In addition, the Commission required that the licensee submit an application to renew the licence for CJMS, as well as an application to transfer ownership of CJMS.
4. Following the above-mentioned orders, 3553230 Canada filed an application (2014-0484-7) to renew the licence for CJMS. In addition, Groupe Médias Pam inc. (Groupe Médias) filed an application (2014-0624-9) for authority to acquire the assets of CJMS from 3553230 Canada. These two closely related applications² were studied together at the 12 November 2014 non-appearing public hearing announced in Broadcasting Notice of Consultation 2014-472.

Interventions

5. The Commission received opposing interventions from Mr. Michel Mathieu and other individuals, all of whom expressed similar concerns, to which Groupe Médias replied. The public record for the applications can be found on the Commission's website at www.crtc.gc.ca or by using the application numbers provided above.
6. Some interveners questioned why control of the company was assumed by Groupe Médias without the Commission's prior approval. In reply, Groupe Médias indicated that an ownership transfer agreement had been undertaken but was subject to Commission approval, as specified in the agreement.
7. In addition, Mr. Mathieu questioned the purchaser's ability to fulfill its obligation to provide the population of Saint-Constant with a potentially improved station with a solid foundation. In that regard, Groupe Médias replied that the non-compliances of the station had been addressed and that it intended to make the station one that beats in time with the concerns of Montréal's South Shore.
8. The interveners also maintained that CJMS was broadcasting ethnic programming in excess of the allowable level since the station simultaneously broadcasts programming

¹ The licence was administratively renewed until 31 March 2015 in Broadcasting Decision 2014-432.

² The applications were submitted to the Commission in accordance with the due dates established in Broadcasting Decision 2014-174.

from CJWI (an ethnic station). In this respect, Groupe Médias stated that it barely devotes 13% of CJMS's programming to programs that originate elsewhere and that none of these programs are ethnic programs.

Commission's analysis and decisions

9. After examining the public record for these applications in light of applicable policies and regulations, the Commission considers that it must examine the following issues:
 - the transaction; and
 - the instances of non-compliance by CJMS.

Transaction

10. Groupe Médias is wholly owned and controlled by its sole shareholder and administrator Mr. Jean Ernest Pierre. He is also sole owner of CPAM Radio Union.com inc., licensee of the French-language commercial ethnic AM station CJWI Montréal.
11. Under the share purchase agreement, Groupe Médias will acquire the assets of CJMS for \$15,000 and an hour's worth of advertising airtime per week for 52 weeks. The applicant did not propose any tangible benefits, noting that the station was experiencing financial difficulties and that investments would be needed to make the station financially viable.
12. Following completion of the transaction, Groupe Médias will become the licensee of CJMS.
13. The Commission notes that approval of the transaction will allow the community of Saint-Contant to be served by a local company that intends to provide listeners with programming that is more balanced. Specifically, Groupe Médias stated that CJMS would offer a wider range of musical genres and a greater variety of selections from Canadian artists in both official languages, as well as reflect Quebec's multicultural and multiracial nature. Groupe Médias also proposed to launch a monthly country music concert series featuring local country artists. It further committed to posting a link on its website to allow consumers to purchase country music, as well as to promoting country music artists. Moreover, the Commission notes that Groupe Médias could benefit from synergies that would allow it to better compete with the numerous players in the Montréal market.
14. In light of the above, the Commission finds that the proposed transaction is in the public interest and that it would allow CJMS to remain in the Saint-Constant market to the benefit of listeners and local advertisers.

Tangible benefits

15. In Broadcasting Public Notice 2006-158, the Commission set out its tangible benefits policy for transactions involving radio stations. In that policy, the Commission considered it appropriate to require a financial contribution to Canadian content development (CCD) representing 6% of the value of the transaction. However, the Commission does not generally require tangible benefits for commercial radio stations that are unprofitable. Radio stations are considered to be unprofitable if their profit before interest and tax (PBIT) averaged over three years preceding the filing of the application to purchase is negative.
16. Given that CJMS's PBIT averaged over the three years preceding the filing of the application has been negative, the Commission finds that tangible benefits are not necessary for this transaction.³

Non-compliance

17. As mentioned above, the Commission found CJMS in non-compliance during its current licence term with sections 8(1), 8(5), 8(6) and 9(4) of the Regulations.
18. In Broadcasting Notice of Consultation 2014-472, the Commission indicated that with respect to the 2011-2012 and 2012-2013 broadcast years, the current licensee of CJMS may have failed to comply with section 9(2) and 15 of the Regulations regarding the filing of annual returns and its contributions to CCD.
19. After examining the licensee's compliance in the context of this proceeding, the Commission notes that :
 - the 2011-2012 annual return was filed a year after the 30 November 2012 deadline and the 2012-2013 annual return was incomplete; and
 - proof of payment to MUSICACTION of CCD contributions for each of the 2011-2012 and 2012-2013 broadcast years have not been submitted to the Commission.
20. Groupe Médias explained that the instances of non-compliance took place while CJMS was under the direction of Mr. David Azoulay (father of Mr. Alexandre Azoulay), who was gravely ill at the time. To ensure the future compliance of CJMS, Groupe Médias stated that an employee and an accountant would be responsible for the station's compliance with the Regulations and its regulatory requirements.

³ The Commission received the application before the publication of its new approach to tangible benefits (set out in Broadcasting Regulatory Policy 2014-459). Consequently, the Commission's practice of exempting stations that have been unprofitable for three years, as set out in Broadcasting Public Notice 2006-158, applies in this case.

21. Consequently, the Commission finds that in addition to the non-compliances with sections 8(1), 8(5), 8(6) and 9(4) of the Regulations, CJMS is also in non-compliance with sections 9(2) and 15 of the Regulations.

Regulatory measures

22. 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.

23. The Commission notes the measures undertaken by the purchaser to ensure the future compliance of the station. However, given the seriousness and recurrence of the instances of non-compliance and the fact that this is the fourth consecutive licence term in which CJMS is in non-compliance with its regulatory requirements, the broadcasting licence for CJMS (to be issued to Groupe Médias upon surrender of the licence currently held by 3553230 Canada) will be for a short term and will expire on 31 August 2017.

24. Moreover, the Commission considers it appropriate to maintain Broadcasting Orders 2014-175 and 2014-176 relating to CJMS in light of their recent imposition. Pursuant to section 13 of the *Broadcasting Act*, the orders will be filed with the Federal Court and will become orders of that court. Failure to comply with a Federal Court order may result in recourse to the compliance procedures of that court.

25. The Commission further **directs** Groupe Médias to file by no later than **29 December 2014**, in a form deemed acceptable⁴ by the Commission, proof of payment to MUSICACTION for each of the 2011-2012 and 2012-2013 broadcast years.

Conclusion

26. In light of all of the above, the Commission **approves** the application by Groupe Médias Pam inc. for authority to acquire the assets of the French-language commercial AM radio programming undertaking CJMS Saint-Constant from 3553230 Canada inc.

27. Upon surrender⁵ of the current licence held by 3553230 Canada, the Commission will issue a new licence to Groupe Médias that will expire on 31 August 2017. The issuance of a new, short-term licence will allow for an earlier review of Groupe Médias' compliance with its regulatory requirements.

⁴ For further information on the proof of payment required by the Commission, see Broadcasting Information Bulletin 2011-795.

⁵ The surrender of CJMS's licence must occur before the date on which the current licence expires, namely 31 March 2015.

28. The Commission emphasizes the importance it places on a licensee's fulfillment of its regulatory obligations. It is the licensee's responsibility to ensure that it is aware of and respects its regulatory obligations at all times. In this case, Groupe Médias must comply with the terms and **conditions of licence** set out in Appendix 1 to this decision, with the CJMS code of ethics set out in Appendix 2 and with the orders set out in Appendix 3 and Appendix 4. The Commission reminds Groupe Médias that in addition to complying with the appendices to this decision, it must comply with the Regulations at all times.
29. In light of the above, there is no need for the Commission to make a determination on the renewal application for CJMS filed by 3553230 Canada.
30. Groupe Médias committed to exceed the minimum contribution to CCD required under section 15 of the Regulations.⁶ Specifically, it committed to devote, by condition of licence, \$500 per year to CCD. At least 20% of this amount must be directed to FACTOR or MUSICACTION in each broadcast year. The remainder must be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of Broadcasting Public Notice 2006-158. A **condition of licence** to this effect is set out in Appendix 1 to this decision.

Secretary general

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2014-472, 12 September 2014
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *CJMS Saint-Constant – Administrative renewal*, Broadcasting Decision CRTC 2014-432, 14 August 2014
- *CJMS Saint-Constant – Issuance of broadcasting orders following recurring non-compliance*, Broadcasting Decision CRTC 2014-174 and Broadcasting Orders CRTC 2014-175 and 2014-176, 11 April 2014
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2013-448-1, 6 September 2013
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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

⁶ Under section 15 of the Regulations, undertakings with revenues of less than \$1.25 million are not required to make CCD contributions.

Appendix 1 to Broadcasting Decision CRTC 2014-641

Terms, conditions of licence and encouragement for the French-language commercial AM radio programming undertaking CJMS Saint-Constant, Quebec

Terms

The licence will expire 31 August 2017.

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.
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations):
 - a) devote, each broadcast week, at least 40% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety; and
 - b) devote, between 6 a.m. and 6 p.m., in any period beginning on Monday of a week and ending on a Friday of the same week, at least 40% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

For the purposes of this condition of licence, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meanings as set out in the Regulations.

3. The licensee shall refrain from soliciting or accepting local advertising for broadcast during any broadcast week when less than one-third of the programming aired is local. The definition of local programming shall be as set out in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.
4. If the licensee broadcasts religious programming as defined in *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993, the licensee shall adhere to the guidelines set out in sections III.B.2.a) and IV of that notice concerning the provision of balance and ethics in religious programming.
5. The licensee shall comply with the code of ethics for CJMS set out in Appendix 2 to this decision.
6. In addition to the basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986*, the licensee shall make an annual contribution of \$500 to CCD. Of this amount, no less than 20% per broadcast

year must be directed to FACTOR or MUSICACTION. The remainder shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

Encouragement

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, 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.

Appendix 2 to Broadcasting Decision CRTC 2014-641

Code of ethics

1. CJMS will, inasmuch as possible and in a balanced and reasonable manner, ensure that its programming is a forum for the expression of differing points of view on matters of public interest.
2. CJMS will make every effort to ensure that its programming is of high standard and that no person, class of persons, association, or formal or informal group is exposed to contempt or hatred based on ethnic or national origin, race, colour, religion, age, physical or mental disability, sex, sexual orientation or family status.
3. CJMS will endeavour at all times to broadcast information programs, viewpoints, commentaries and editorials that demonstrate integrity, accuracy, objectivity and impartiality.
4. Hosts, journalists and guests will always disclose any personal interests they may have in an issue being discussed or commented on during a program. Commitment to a cause shall not under any circumstances lead to facts being distorted or presented in a non-objective or biased manner.
5. Similarly, hosts and journalists will not use the airwaves to launch personal attacks or to obtain personal favours of any kind.
6. A host may offer his or her opinion provided it is done with respect.
7. A host or journalist may, and in some cases must in the public interest, raise the validity of remarks made by a speaker in the course of a program in order to ensure balance and representativeness. CJMS shall do everything possible to maintain balance in its religious programs and in all its programming.
8. Listeners have a right of reply if they feel offended by an observation, commentary, interview, statement or report pertaining to them. Any person who wishes to exercise this right of reply may contact the general manager of the station, who will then work with the person making the request to determine the appropriateness and validity of the request and establish the terms and conditions of the reply.
9. The production teams for programs will verify the intentions and interests of guests or participants (listeners) on programs. Without limiting freedom of expression or the free flow of ideas and opinions, the production team will carry out the necessary checks to ensure that organized groups do not take control of programs.
10. Hosts and journalists are members of the production team and in that capacity endorse the choices made. They also share responsibility for ensuring compliance with these rules.

11. Open-line or call-in programs are subject to a time delay. The host or producer shall turn on the time delay system if remarks by a listener contravene the principles of this code of ethics. Any employee involved in this type of programming shall have a copy of this code and shall be directed to use the time delay system in the event of any doubt.
12. Participants in an open-line or other program, public figures, listeners, and formal or informal groups are entitled to respect and should not be harassed, insulted or ridiculed.
13. Coarse or vulgar remarks have no place in programming.
14. Hosts, journalists and other participants in information programs will ensure that their remarks, comments or reports do not interfere with any person's right to a fair trial.

Appendix 3 to Broadcasting Decision CRTC 2014-641

Broadcasting Order CRTC 2014-642

Pursuant to section 12(2) of the *Broadcasting Act*, the Commission hereby orders Groupe Médias Pam Inc., licensee of CJMS Saint-Constant, to comply at all times during the term of the licence granted in this decision with the requirements set out in sections 8(1), 8(5) and 8(6) of the *Radio Regulations, 1986*, which read as follows:

- 8(1) Except otherwise provided under a condition of its licence, the licensee shall:
- (a) keep, in a form acceptable to the Commission, a program log or a machine-readable record of the matter broadcast by the licensee;
 - (b) retain the log or record for a period of one year after the date on which the matter was broadcast;
 - (c) cause to be entered in the log or record, daily, the following information:
 - (i) the date,
 - (ii) the call letters, location and frequency of the licensee's station,
 - (iii) the time at which the station identification announcement is made,
 - (iv) in relation to each program broadcast:
 - (A) the title and a brief description,
 - (B) subject to subsection (2), the number of the relevant content category,
 - (C) the time at which the program begins and ends,
 - (D) the code set out in the schedule indicating the origin of the program and where applicable the language, type or group,
 - (E) if applicable, the code set out in the schedule identifying non-Canadian programming,
 - (v) in relation to each commercial message, the quarter hour during which it is broadcast, its duration and the number of the relevant content subcategory.
- (5) The licensee shall retain a clear and intelligible tape recording or other exact copy of all matter broadcast
- (a) for four weeks from the date of the broadcast; or
 - (b) where the Commission receives a complaint from any person regarding the matter broadcast or for any other reason wishes to investigate it and

so notifies the licensee before the expiration of the period referred to in paragraph (a), for eight weeks from the date of the broadcast.

- (6) Where, before the expiry of the applicable period referred to in subsection (5), the Commission requests from the licensee a clear and intelligible tape recording or other exact copy of matter broadcast, the licensee shall furnish it to the Commission forthwith.

Appendix 4 to Broadcasting Decision CRTC 2014-641

Broadcasting Order CRTC 2014-643

Pursuant to section 12(2) of the *Broadcasting Act*, the Commission hereby orders Groupe Médias Pam Inc., licensee of CJMS Saint-Constant, to comply at all times during the term of the licence granted in this decision with the requirements set out in section 9(4) of the *Radio Regulations, 1986*, which reads as follows:

9(4) At the request of the Commission, the licensee shall respond to:

- (a) any complaint or request for resolution of a dispute filed by any person or any request for information regarding programming originated or distributed by the licensee or regarding the licensee's technical operations, subscribership, financial affairs or ownership; and
- (b) any request for information regarding the licensee's adherence to the conditions of its licence, the Act, these Regulations, industry standards, practices or codes or any other self-regulatory mechanism of the industry.