



Broadcasting Decision CRTC 2018-289

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Reference: Part 1 applications posted on 23 February 2018

Ottawa, 17 August 2018

My Broadcasting Corporation
Peterborough, Ontario

Public record for these applications: 2017-0744-9 and 2017-0748-1

CJMB-FM Peterborough – Licence renewal and amendments

*The Commission **renews** the broadcasting licence for the English-language commercial specialty radio station CJMB-FM Peterborough from 1 September 2018 to 31 August 2023. This short-term licence renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.*

*Further, the Commission **approves** an application to amend the broadcasting licence for CJMB-FM by amending its conditions of licence related to the broadcast of musical selections from content category 2 (Popular Music), content category 3 (Special Interest Music), and content subcategory 35 (Non-classic religious).*

Applications

1. My Broadcasting Corporation (My Broadcasting) filed an application to renew the broadcasting licence for the English-language commercial specialty radio station CJMB-FM Peterborough, Ontario, which expires 31 August 2018.
2. My Broadcasting also filed an application to amend the broadcasting licence for CJMB-FM by amending its conditions of licence related to the broadcast of musical selections from content category 2 (Popular Music), content category 3 (Special Interest Music), and content subcategory 35 (Non-classic religious). The specific amendments are set out later in this decision.
3. The Commission received a joint intervention opposing the amendments from Bell Media Inc. (Bell) and Corus Entertainment Inc. (Corus), to which My Broadcasting replied.

Background

4. In Broadcasting Decision 2013-671, the Commission approved an application by My Broadcasting for authority to acquire the assets of CJMB-FM and for a broadcasting licence to continue the operation of the station. As noted in that decision, the licensee of CJMB-FM was bankrupt and the station had not been profitable over its last three years of operation. Nonetheless, the new licence was

issued for a short term, expiring 31 August 2018, in light of findings of repeated non-compliance with Canadian content development (CCD) contributions. These included shortfalls from the previous licence term as set out in Broadcasting Decision 2010-893.

5. Following its acquisition of CJMB-FM, My Broadcasting changed the station's format from Christian music to a spoken word format based on sports.

Non-compliance

Musical selections from content subcategory 35

6. As set out in the appendix to Broadcasting Decision 2013-671, the licensee of CJMB-FM is subject to condition of licence number 3, which reads as follows:

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).

7. During the broadcast week of 16 to 22 October 2016, the licensee broadcast four musical selections, none of which were drawn from content subcategory 35.
8. The licensee explained that CJMB-FM operates with a talk/sports format that consists almost entirely of spoken word programming. The non-compliance occurred during a program featuring stories of emerging and Indigenous artists, which the licensee considered served to further the objectives of the *Broadcasting Act* (the Act). The licensee added that the non-compliance was not deliberate and that it had removed the program from CJMB-FM's schedule.
9. In light of the above, the Commission finds the licensee in non-compliance with CJMB-FM's condition of licence number 3.

Local programming

10. As set out in the appendix to Broadcasting Decision 2013-671, the licensee of CJMB-FM is required to adhere to various conditions for commercial AM and FM stations set out in Broadcasting Regulatory Policy 2009-62. In particular, condition of licence number 8 in that policy provides that a licensee of a commercial FM station operating in a market served by more than one private commercial FM station 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. For the purposes of that condition and consistent with the definitions set out in the *Radio Regulations, 1986* (the Regulations), a "broadcast week" refers to the total number of hours devoted to broadcasting during the 126 hour period from 6:00 a.m. to midnight for seven consecutive days beginning on a Sunday.

11. During the broadcast week of 16 to 22 October 2016, the licensee was found to have broadcast 25 hours and 34 minutes of local programming on CJMB-FM. Commercial blocks and local advertisements were also broadcast during that broadcast week. Given that the licensee devoted 126 hours to broadcasting on CJMB-FM during that broadcast week, and that the Peterborough radio market is served by more than one private commercial FM station, the licensee was required to maintain a local programming level of at least 42 hours in order to solicit or accept local advertising.
12. The licensee acknowledged the non-compliance and suggested that there was a misunderstanding of the Commission's definition of local programming. The licensee believed that commercials would qualify as local programming if they were produced separately and exclusively for the station. My Broadcasting argued that commercials can be of direct and particular relevance to local communities by promoting local economic events and activities. The licensee compared the spectacle of local commercials broadcast on small town radio to that of television commercials broadcast during the Super Bowl. Nonetheless, the licensee added that it had implemented programming changes on 1 February 2017 to ensure full compliance with its local programming requirements going forward. In support of these changes, the licensee filed a programming schedule with more than 49 hours of local programming to be broadcast on a weekly basis.
13. In light of the above, the Commission finds the licensee in non-compliance with condition of licence number 8 set out in Broadcasting Regulatory Policy 2009-62.

Regulatory measures related to non-compliance

14. The Commission's current approach to non-compliance by licensees of radio stations is set out in Broadcasting Information Bulletin 2014-608. Under that approach, each instance of non-compliance is evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The circumstances leading to the non-compliance, the arguments provided by the licensee, and the actions taken to rectify the situation are also considered.
15. In the present case, the Commission notes the unique circumstances that led to the non-compliance with respect to levels of music drawn from content subcategory 35, which related to the only four musical selections that the licensee broadcast on CJMB-FM during the broadcast week in question. However, the non-compliance with respect to local programming was concerning in that it related to a significant shortfall in the broadcast of local programming during the broadcast week.
16. Moreover, the Commission notes that this is the third consecutive licence term in which the licensee of CJMB-FM has been in non-compliance with its regulatory obligations. While the previous non-compliance described in Broadcasting Decisions 2010-893 and 2013-671 occurred when the station was licensed to previous owners, the non-compliance from the current licence term relating to the broadcast week of 16 to 22 October 2016 occurred almost three years after My

Broadcasting took control of CJMB-FM. Furthermore, the Commission has held the position that, as part of the necessary due diligence associated with acquiring the new station, any instances of non-compliance from the past become the responsibility of the new owner following its acquisition of that station and additional measures to address the non-compliance are imposed on the new owner as deemed appropriate.¹

17. However, the Commission is satisfied with the corrective action taken by the licensee and considers that My Broadcasting should be able to operate CJMB-FM in compliance with its regulatory obligations going forward.
18. Accordingly, in light of the serious and recurring nature of the non-compliance, the Commission considers it appropriate to grant the station a short-term renewal of five years. This short-term licence renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.

Licence amendments

19. My Broadcasting filed an application to amend the broadcasting licence for CJMB-FM by amending its conditions of licence related to music. Specifically, the licensee proposed to delete the following conditions of licence, as set out in the appendix to Broadcasting Decision 2013-671:
 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.)
20. My Broadcasting further proposed to replace its existing condition of licence relating to Canadian musical selections drawn from content category 3, which, as set out in the appendix to Broadcasting Decision 2013-671, reads as follows:
 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.
21. My Broadcasting proposed the following as a new condition of licence:

¹ The Commission expressed this view in Broadcasting Decision 2010-893.

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), devote:

- No more than 25% of all programming broadcast during each broadcast week to musical selections;
- In each broadcast week, at least 38% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety; and
- Between 6 a.m. and 6 p.m., in any period beginning on Monday of a week and ending on Friday of the same week, at least 38% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

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

Intervention and reply

22. In their joint intervention, Bell and Corus opposed My Broadcasting’s licence amendments for CJMB-FM. The interveners noted that My Broadcasting had agreed to the conditions of licence in question when it acquired CJMB-FM in 2013. Moreover, they expressed concern about the potential impact that the amendments could have on the Peterborough radio market. Bell and Corus also questioned the rationale for the application in light of the licensee’s apparent non-compliance.
23. In the event that the Commission were to approve the amendment, Bell and Corus asked the Commission to impose additional conditions of licence that would require CJMB-FM to broadcast predominantly sports-related programming and to broadcast music from content category 2 (Popular music) only from 6 p.m. to midnight.
24. In reply, My Broadcasting submitted that CJMB-FM would continue to provide a sports talk format and that the purpose of the amendments is to provide some programming flexibility. My Broadcasting added that it would entertain the option of reducing the maximum amount of music that can be broadcast to 20% if the Commission considered that the proposed 25% was too high.

Commission’s analysis

25. As noted earlier in this decision, the Commission has found the licensee in non-compliance with condition of licence number 3 relating to the level of subcategory 35 music broadcast by CJMB-FM. This finding of non-compliance is directly related to the licensee’s proposed amendment, which includes a request to delete condition of licence number 3.

26. With respect to licence amendments, Broadcasting Information Bulletin 2014-608 states that the Commission will consider any instances of non-compliance in light of factors such as the quantity, recurrence and seriousness of the non-compliance, as well as the relationship between the proposed amendments and the instance of non-compliance. The circumstances leading to the non-compliance, the arguments provided by the licensee and the actions taken to rectify the situation can also be taken into consideration.
27. In cases where a licensee is found to be in non-compliance with a regulatory obligation that it is proposing to amend, Broadcasting Information Bulletin 2014-608 states that the Commission could deny the licensee's application for the amendment.
28. However, in this case, the Commission considers that there are a number of mitigating factors and extenuating circumstances that apply. When My Broadcasting acquired CJMB-FM out of bankruptcy, the station was offering a Christian music format. My Broadcasting changed the format to spoken word programming based on sports and has not broadcast Christian music since. The current conditions are therefore no longer relevant to the service that CJMB-FM provides. Without them, the licensee would still be required to operate within the specialty format and with a condition of licence requiring the majority of the station's programming in each broadcast week to be spoken word programming, thereby continuing to add to the diversity of programming available to listeners in the Peterborough market.
29. CJMB-FM has not been financially viable since its inception and continues to experience financial difficulties. The Commission further notes that the conditions of licence are not consistent with the station's current programming and business approach. The Commission therefore considers a compelling economic need for the licence amendment has been demonstrated.
30. The interveners expressed concern about the effect that approving My Broadcasting's proposal could have on other commercial stations in the market. The Commission considers that the applicant has demonstrated that there is room for growth in the Peterborough radio market for the sports talk format. It further notes that the applicant's most optimistic revenue projection increases represent less than 1% of Peterborough radio market revenues. Further, profitability has improved in the Peterborough radio market since 2014. The Commission therefore is of the view that approving the licensee's proposed amendments will not have an undue negative impact on the Peterborough radio market.
31. Bell and Corus suggested additional conditions of licence imposing a sports format on CJMB-FM and restricting the broadcast of music from content category 2 to between 6 p.m. and midnight. However, the Commission considers that the current conditions of licence requiring CJMB-FM to operate in the specialty format and to devote more than 50% of all programming to spoken word as well as its proposed 25% limitation on music from content category 2 are sufficient to ensure that CJMB-FM provides a service that is complementary to, rather than imitative of, the programming offered by other Peterborough stations.

Conclusion

32. In light of all the above, the Commission **renews** the broadcasting licence for the English-language commercial specialty radio programming undertaking CJMB-FM Peterborough, Ontario, from 1 September 2018 to 31 August 2023. The terms and conditions of licence are set out in the appendix to this decision.
33. Further, the Commission **approves** the application by My Broadcasting Corporation to amend the broadcasting licence for CJMB-FM by deleting conditions of licence number 3 and number 4 and replacing condition of licence number 5, as previously set out in the appendix to Broadcasting Decision 2013-671.

Reminders

34. Should the licensee continue to be in non-compliance with its regulatory requirements, the Commission may consider recourse to additional measures as part of the next licence renewal process, including the issuance of a mandatory order or the revocation or non-renewal of the licence.
35. The Commission reminds the licensee of the importance of providing local programming of direct and particular interest to the community of Peterborough.
36. Pursuant to section 22 of the Act, the broadcasting licence renewed in this decision will cease to have any force or effect should the broadcasting certificate issued by the Department of Industry lapse.

Secretary General

Related documents

- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *CJMB-FM Peterborough – Acquisition of assets*, Broadcasting Decision CRTC 2013-671, 11 December 2013
- *CJMB-FM Peterborough – Licence renewal*, Broadcasting Decision CRTC 2010-893, 30 November 2010
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2018-289

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

Terms

The licence will expire 31 August 2023.

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, as well as the conditions set out in the licence for the undertaking.
2. The station shall be operated 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.
3. The licensee shall, as an exception of the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* devote:
 - In each broadcast week, at least 38% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety; and
 - Between 6 a.m. and 6 p.m., in any period beginning on Monday of a week and ending on Friday of the same week, at least 38% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.
4. The licensee shall devote no more than 25% of each broadcast week to the broadcast of musical selections.
5. The licensee shall devote more than 50% of each broadcast week to the broadcast of spoken word programming.

For the purposes of these conditions of license, the terms “broadcast week,” “Canadian selection,” content category,” and “musical selections” shall have the meanings set out in the *Radio Regulations, 1986*.

Expectation

Cultural diversity

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment equity practices.

Encouragement

Employment equity

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.