



Broadcasting Decision CRTC 2020-239

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Reference: 2020-75, 2020-75-1, 2020-75-2 and 2020-75-3

Ottawa, 31 July 2020

Groupe Médias Pam inc.
Saint-Constant, Quebec

*Public record for this application: 2019-0733-8
Virtual public hearing in the National Capital Region
16 June 2020*

CJMS Saint-Constant – Non-renewal of licence

*The Commission **denies** the application from Groupe Médias Pam inc. to renew the broadcasting licence for the French-language commercial radio station CJMS Saint-Constant, Quebec.*

In light of the severity and recurrence of the current instances of non-compliance; of the station's history of non-compliance and the licensee's actions, which demonstrate a poor understanding of its conditions of licence and regulatory obligations, or a lack of willingness to respect them; of its inability to implement the necessary measures to ensure compliance; and of its disregard for the Commission's authority and for its responsibilities as a broadcaster, the Commission is convinced that the imposition of conditions of licence or of mandatory orders, a suspension, or a short-term licence renewal would not be effective measures. Consequently, the Commission finds that not renewing the licence is the only appropriate measure in the circumstances.

Application

1. The Commission has the authority, pursuant to section 9(1) of the *Broadcasting Act* (the Act), to issue and renew licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in section 3(1) of the Act.
2. On 3 June 2019, the Commission issued Broadcasting Notice of Consultation 2019-194, which requested that radio station licensees whose licences expire 31 August 2020 to submit an application to renew their broadcasting licences to continue their operations after this date.
3. In response to this notice, Groupe Médias Pam inc. (Groupe Médias) filed an application to renew the broadcasting licence for the French-language commercial radio station CJMS Saint-Constant, Quebec, which expires 31 August 2020.

Interventions and reply

4. The Commission received four interventions in opposition to the application. The interveners indicated that the programming of the French-language commercial ethnic radio station CJWI Montréal, whose licensee is CPAM Radio Union.com inc., is largely rebroadcast on CJMS and that CJMS does not broadcast enough country music. Mr. Jean-Ernest Pierre is the sole shareholder effectively controlling Groupe Médias and CPAM Radio Union.com inc., the respective licensees of CJMS and CJWI.
5. Further, interveners are of the view that, in fairness to other broadcasters who are making efforts to comply with their regulatory requirements, the Commission should impose consequences commensurate with CJMS' serious and repeated non-compliance over several consecutive licence periods. The interveners also noted that the voice of an announcer who passed away two years ago is still broadcast on CJMS. Finally, they stated that the station is often off the air.
6. In reply to the interventions, the licensee indicated that the station adheres to the percentage of programming authorized by the Commission. In regard to the voice of the announcer who passed away that is still on air, the licensee indicated that it obtained the permission of the family of the deceased. The licensee added that the station faces multiple technical issues that result in periods during which the station is off the air but that it has taken measures to rectify the technical issues, including hiring an engineering firm to perform performance tests on CJMS. Further, the licensee submitted that it corrected several irregularities and that the remaining issues relating to the station's performance are the result of technical errors or lack of understanding by the station's team.

Background

7. In Broadcasting Decision 2006-352, the Commission found the licensee in non-compliance with sections 2.2(5), 8(5), 8(6) and 9(2) of the *Radio Regulations, 1986* (the Regulations) relating to the broadcast of content category 2 French-language musical selections, the keeping and filing of audio recordings of the matter broadcast and the filing of annual returns. The Commission also found the licensee in non-compliance in regard to Canadian talent development (CTD) contributions.¹ For these reasons, the Commission renewed CJMS's broadcasting licence for a short term of two years.
8. In Broadcasting Decision 2008-223, the Commission renewed the station's broadcasting licence for a short term of two years because of the licensee's non-compliance with section 9(2) of the Regulations, regarding the filing of complete annual returns in a timely manner, as well as with the payment of

¹ In Broadcasting Public Notice 2006-158, the Commission replaced the expression "Canadian talent development" with "Canadian content development."

Canadian content development (CCD) contributions for the 2005-2006 broadcast year.

9. In Broadcasting Decision 2010-631, the Commission renewed CJMS's broadcasting licence for a short term of four years as a result of the licensee's non-compliance with its condition of licence relating to CTD.
10. In November 2013, in the middle of the licence term, the Commission made several attempts to obtain the station's logger tapes and program logs to analyze them during the station's licence renewal process. Subsequently, the Commission requested that the licensee at the time (3553230 Canada Inc.) appear at a public hearing to show cause why an order requiring the licensee to comply with sections 8(1), 8(5), 8(6) and 9(4) of the Regulations should not be issued. Following a non-appearing hearing, the Commission issued Broadcasting Decision 2014-174 and Broadcasting Orders 2014-175 and 2014-176 requiring the licensee to comply at all times with sections 8(1), 8(5), 8(6) and 9(4) of the Regulations.
11. In Broadcasting Decision 2014-641, the Commission approved Groupe Médias' application for authority to acquire from 3553230 Canada Inc. the assets of CJMS. The Commission also found the licensee in non-compliance with sections 8(1), 8(5), 8(6), 9(2), 9(4) and 15 of the Regulations, regarding the submission of complete program logs and recordings, the filing of complete annual returns, the requirement to respond to any Commission request for information and CCD contributions. It also reimposed Broadcasting Orders 2014-175 and 2014-176.
12. Finally, in Broadcasting Decision 2018-172, the Commission found the licensee in non-compliance with section 8(6) of the Regulations and Broadcasting Order 2014-642 (set out in Appendix 3 to Broadcasting Decision 2014-641) regarding the requirement to provide a clear and intelligible audio recording of the matter broadcast. It also found the licensee in non-compliance with section 9(2) of the Regulations, regarding the filing of complete annual returns, and with section 9(4) and Broadcasting Order 2014-643 (set out in Appendix 4 to Broadcasting Decision 2014-641) regarding the requirement to respond to any Commission request for information. Accordingly, the Commission renewed CJMS's broadcasting licence for a short term of two years and imposed mandatory orders requiring the licensee to comply with sections 8(1), 8(5), 8(6), 9(2) and 9(4) of the Regulations.

Non-compliance

13. In Broadcasting Notice of Consultation 2020-75, the Commission stated that the licensee was in apparent non-compliance with the following:
 - section 9(2) of the Regulations, relating to the filing of complete annual returns by 30 November of each year, for the 2018-2019 broadcast year;
 - Broadcasting Mandatory Order 2018-175 relating to the requirement to comply at all times with section 9(2) of the Regulations;

- section 9(3)(a) of the Regulations relating to the filing of a complete and accurate self-assessment report; and
 - section 9(3)(b) of the Regulations relating to the filing of a complete and accurate music list.
14. The Commission reiterated that the recurring nature of the non-compliance as well as the non-compliance with the mandatory orders are clearly indicative of the licensee's unwillingness to comply with its regulatory requirement. The Commission expressed concerns regarding the licensee's ability to continue operating the station. The Commission further noted that should the licensee again breach the regulatory requirements, including the mandatory orders, it would consider the possibility of suspending, not renewing or revoking CFOR-FM's licence under sections 9 and 24 of the Act.

Filing of annual returns

15. Section 10(1)(i) of the Act authorizes the Commission to make regulations in furtherance of its objects requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify.
16. Pursuant to this authority, the Commission set out section 9(2) of the Regulations, which requires licensees to file their annual returns, including financial statements, by 30 November of a given year for the broadcast year ending the previous 31 August. The specific filing requirements are set out in Broadcasting Information Bulletin 2011-795.
17. The licensee filed its annual returns for the 2018-2019 broadcast year on time, but it was incomplete. Specifically, certain pages of the financial statement were missing.
18. In a clarification letter dated 27 January 2020, the Commission asked the licensee to comment on the circumstances leading to the apparent non-compliance. In its reply dated 4 February 2020, the licensee indicated that according to the accountant who prepared and verified the documents to file with the Commission, the annual return was complete. Considering that the electronic non-transmission of the missing files was the result of the fact that they were too large, and could explain, according to him, the fact that the document was incomplete, the licensee submitted another file on 3 February 2020.
19. At the public hearing, the licensee stated that, to ensure that the non-compliance does not reoccur, Ms. Asma Heurtelou would be responsible for sending the annual returns and that the licensee would ensure that all the information is included. It added that it would then call the Commission to confirm that the Commission received all the attachments.

Commission's analysis and decision

20. Compliance with the requirements relating to the filing of complete and accurate annual returns is essential to the Commission. An annual return that is filed late or with incomplete or inaccurate information does not allow for a complete assessment of licensees' compliance with respect to the CCD contributions. Accordingly, the annual filing of the required information enables the Commission not only to assess effectively licensees' performance and compliance with regulations and obligations, but also to evaluate and regulate effectively the broadcasting industry. Annual returns are a key element of the Commission's current monitoring plan and an authoritative source of statistics on the Canadian broadcasting industry for use by all stakeholders. These filings are important indicators of whether the licensee has the willingness, ability and knowledge to achieve and maintain compliance.
21. The Commission acknowledges that the non-compliance in relation to the filing of annual returns for the 2018-2019 broadcast year is related to the lack of complete attachments. However, during CJMS's last licence renewal, the Commission noted, in Broadcasting Decision 2018-172, that the authorized representative would now be responsible for reviewing all the documents produced by the bookkeeper to ensure that they are filed with the Commission in a timely manner. In this case, the non-compliance would have been caused by the licensee's failure to ensure that the documents sent included all pages of the financial statements. However, CJMS employee who made this commitment in 2018 and who was responsible for the annual returns during the last licence term admitted at the public hearing that she did not open the attachments to ensure that they were completed. The Commission is not convinced that the solution proposed by the licensee in order to comply with the filing of annual returns is appropriate, given that it proposed the same solution during the last licence renewal and was unable to meet its commitment.
22. The Commission considers that the fact that this commitment was not fulfilled or successful demonstrates a clear lack of responsibility on the part of the licensee, especially since the licensee was required to comply with section 9(2) of the Regulations pursuant to a broadcasting order. When it issues such an order, the Commission expects the licensee to implement measures, to take concrete actions and to make every effort necessary to ensure that such a non-compliance does not reoccur. Breaching a broadcasting order imposed by the Commission is a severe violation.
23. In light of the above, the Commission finds the licensee in non-compliance with section 9(2) of the Regulations for the 2018-2019 broadcast year and that it is in breach of Broadcasting Order 2018-175 set out in Appendix 6 to Broadcasting Decision 2018-172.

Radio monitoring materials

24. Pursuant to its authority under section 10(1)(i) of the Act, the Commission also sets out regulations relating to monitoring materials. Thus, sections 9(3)(a) and 9(3)(b) of the Regulations set out the requirements regarding the information to include in a station's self-assessment report and the information on the musical selections that

the licensee must include in its musical list for any period specified by the Commission.

25. During CJMS's licence renewal process, the Commission examined the station's programming for the 4 to 10 November 2018 broadcast week. The number of musical selections indicated in the station's self-assessment report was different from the one in the list of musical selections. Specifically, 356 musical selections broadcast during this broadcast week were identified in the self-assessment report but were not included in the list of musical selections.
26. In a letter to the Commission dated 7 May 2019, the licensee indicated that since the employee responsible for preparing the monitoring materials passed away, another employee took over the responsibility. The licensee submitted that the difference between the self-assessment report and the list of musical selections stems from the employee's lack of understanding and experience. This employee contacted Commission, which explained the expected calculation, and the licensee indicated that the problem should not reoccur.
27. At the public hearing, the licensee admitted that there was a period during which the employees did not understand the process and indicated that after doing some research, the employees understood that the problem was caused by the software used to produce the documentation required for radio monitoring.
28. In its reply letter dated 4 February 2020, the licensee submitted that to ensure compliance in the future, it obtained clarification from the Commission regarding what is considered a content category 2 musical selection. It now posts a table of the different categories and musical selections that are considered Canadian. The licensee added that all the station's stakeholders have been made aware of the situation.

Commission's analysis and decision

29. Adherence to the requirements relating to the filing of radio monitoring materials is indispensable for to the Commission to monitor a station's performance and to verify its compliance with the Regulations and its conditions of licence. Further, when the material filed contains inconsistencies, this hinders the Commission's ability to independently confirm a licensee's adherence to its regulatory obligations. These filings are important indicators as to whether the licensee has the willingness, ability and knowledge necessary to bring itself into compliance and maintain such compliance.
30. The licensee had many discussions with Commission staff to help it comply with the various sections of the Regulations. In every discussion, verbal or written, Commission staff took the time to explain to the licensee how to interpret the various requirements and to provide the documentation required for the station's performance evaluation.

31. This is the licensee's first non-compliance with section 9(3) of the Regulations. However, this is the fourth licence term during which the licensee is in non-compliance with the requirements relating to monitoring materials, including three consecutive licence terms.
32. Despite the licensee's explanations, the Commission considers that it could have taken concrete steps to bring itself into compliance with the regulatory requirements regarding monitoring materials earlier in its licence term and before the Commission questioned it on the matter. The Commission had to call the licensee to appear before the Commission for the licensee to take steps to achieve compliance. Accordingly, the Commission doubts the licensee's willingness to achieve regulatory compliance and its ability to comply with the regulatory requirements relating to radio monitoring materials in the future.
33. In light of the above, the Commission finds the licensee in non-compliance with sections 9(3)(a) and 9(3)(b) of the Regulations.

Local programming

34. After taking note of the concerns raised by the interveners during this licence renewal proceeding, the Commission noted that CJMS produces little local programming, including news, for the Saint-Constant market.
35. In response to a request for information from the Commission, dated 4 February 2020, to clarify the number of hours of local programming that it intended to broadcast on CJMS during the next licence term, the licensee confirmed its intention to broadcast 114 hours of local programming per broadcast week.
36. During the current licence term, Groupe Médias did not produce local news regularly. The licensee submitted that the lack of news and events to cover, as well as the lack of staff, explain this situation. It added that it has broadcasted national news from CJWI Montréal instead.

Commission's analysis and decision

37. As noted in the Canadian broadcasting policy, more specifically in section 3(1)(b) of the Act, the Canadian broadcasting system makes use of radio frequencies that are public property and provides an essential public service. The Canadian broadcasting policy also declares that programming should serve the needs and interests, and reflect the circumstances and aspirations, of all Canadians (section 3(1)(d)(iii)) as well as be drawn from local, regional, national and international sources (section 3(1)(i)(iii)). Given that stations use a limited public resource with limited scope and that radio stations are an important daily source of local news and information for communities, in licensing stations the Commission licences those it considers can best serve the needs and interests of the local communities they are licensed to serve.

38. In Broadcasting Regulatory Policy 2006-158, the Commission specifies that, in their local programming, licensees must incorporate spoken word material of direct and particular relevance to the community served. This spoken word material must include local news, weather and sports coverage, as well as the promotion of local events and activities.
39. When the Commission questioned the licensee about its local programming following the interventions received, the licensee admitted that it did not have staff at its disposal to cover the area of Saint-Constant. Rather, it claimed to depend on the news published in the newspapers and that the events in Saint-Constant do not seem to attract journalists' attention. Accordingly, the Commission considers that CJMS does not adequately serve Saint-Constant, the market it is licenced to serve, which is contrary to Broadcasting Regulatory Policy 2006-158 and the Commission's expectation that a radio station's offer local programming.
40. Further, the Commission notes that the station's numerous technical issues have caused frequent service interruptions in the last six months. This means that Saint-Constant listeners are not served adequately and that, consequently, the station does not contribute to the achievement of the objectives set out in the Act.

Regulatory measures

41. The Commission's approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2014-608. Under this 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 steps taken to rectify the situation are also considered.
42. This is the sixth consecutive licence term during which the licensee has been found in non-compliance with regulatory requirements. Furthermore, it breached a broadcasting order regarding the filing of annual returns, which is considered a severe contravention.
43. In Broadcasting Decision 2018-172, the Commission warned that should the licensee again breach regulatory requirements, including the mandatory orders, the Commission would consider the suspension, non-renewal or revocation of the licence under sections 9 and 24 of the Act. As the Commission explained to the licensee at the hearing, breaching a mandatory order imposed by the Commission carries a number of implications for the licensee and could lead to legal proceedings for contempt of court in the Federal Court.
44. Although the licensee demonstrated at the public hearing a willingness to continue operating the station and proposed additional measures to comply with its obligations, the Commission notes its inability to comply with its regulatory measures, despite the Commission's explanations regarding its regulatory regulations and the warnings about the consequences of non-compliance. Groupe

Médias could have put concrete measures in place to remedy its non-compliance before the Commission questioned it on the matter. In fact, the incumbent received several warnings from the Commission to ensure compliance.

45. When the Commission asked the licensee to comment on the possibility of suspension, revocation or non-renewal of the licence under sections 9 and 24 of the Act, the licensee responded that it would be unfair to hold the licensee liable for the previous licensee's non-compliance. However, when the licensee acquired the station in 2014 (Broadcasting Decision 2014-641), the licensee was informed of CJMS's previous non-compliance and committed to improving the station. The Commission took this into account when it approved the transaction.
46. It is the licensees' responsibility to know their regulatory obligations to ensure their stations' compliance. Given the licensee's responses to the non-compliance, the Commission doubts that the licensee understands some of its obligations.
47. Finally, the Commission notes that the licensee did not receive any interventions in support of the application and received four interventions in opposition from residents of the area.
48. Given that holding a broadcasting licence is a privilege, broadcasters are required to adhere at all times to a number of regulatory requirements and conditions of licence. Under the same circumstances, a responsible licensee would have understood the seriousness of the situation and the Commission's warnings and would have taken all the necessary steps to correct the situation as quickly as possible.

Conclusion

49. The licensee's history shows many instances of non-compliance during the last six consecutive licence terms, often with regard to the same regulatory requirements. This demonstrates that the licensee does not take seriously the Commission's regulatory requirements to which it is subject, its conditions of licence or the Commission's mandatory orders.
50. Despite several warnings from the Commission, the licensee continued to be in non-compliance. The current non-compliance instances are not isolated incidents, but rather instances of severe and recurring non-compliance. Accordingly, the Commission is not convinced that a change in the licensee's behaviour regarding its regulatory obligations will occur: none of the licensee's actions demonstrates a willingness to comply with its regulatory obligations in the future.
51. The Commission has considered all of the regulatory measures available to it to ensure that the licensee adheres to its obligations, including imposing conditions of licence or mandatory orders, granting a short-term renewal, and suspending CJMS's broadcasting licence.
52. In light of the severity and recurrence of the current instances of non-compliance; of the station's history and the licensee's actions, which clearly demonstrate its poor

understanding of its conditions of licence and regulatory obligations, or a lack of willingness to respect them; of the licensee's demonstrated inability to implement the necessary measures to ensure compliance; and of its disregard for the Commission's authority and for its responsibilities as a broadcaster, the Commission is not convinced that imposing conditions of licence or mandatory orders, suspending the licence or granting a short-term renewal would be effective measures to ensure its compliance. Consequently, the Commission finds that not renewing the licence is the only appropriate measure in the circumstances.

53. In light of all of the above, the Commission **denies** the application by Groupe Médias Pam inc. to renew the broadcasting licence for the French-language commercial radio programming undertaking CJMS Saint-Constant, Quebec. Accordingly, the licence will expire at midnight on 31 August 2020 and, as of this date, the licensee will have to cease operating this station.
54. A copy of this decision will be sent to Innovation, Science and Economic Development Canada to inform it of the situation and terminate the broadcasting licence.
55. The Commission invites all interested parties to file an application to obtain a broadcasting licence to operate a radio station to serve the population of Saint-Constant. All applications received will be assessed on their own merits.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2020-75, 26 February 2020
- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2019-194, 3 June 2019
- *CJMS Saint-Constant – Licence renewal and amendment, and issuance of mandatory orders*, Broadcasting Decision CRTC 2018-172 and Broadcasting Orders CRTC 2018-173, 2018-174 and 2018-175, 18 May 2018
- *CJMS Saint-Constant – Acquisition of assets, licence renewal and maintaining of broadcasting orders*, Broadcasting Decision CRTC 2014-641 and Broadcasting Orders CRTC 2014-642 and 2014-643, 11 December 2014
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006