



## Broadcasting Decision CRTC 2020-303

PDF version

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

Ottawa, 26 August 2020

### **I.T. Productions Ltd.**

Vancouver, British Columbia

*Public record for this application: 2019-0943-3*

*Electronic public hearing in the National Capital Region*

*16 June 2020*

### **CJRJ Vancouver – Licence renewal**

*The Commission **renews** the broadcasting licence for the commercial ethnic AM radio station CJRJ Vancouver from 1 September 2020 to 31 August 2023. This short-term licence renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.*

#### **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 listed the radio stations for which the broadcasting licences would expire 31 August 2020 and therefore needed to be renewed to continue their operations. In that notice of consultation, the Commission requested that the licensees of those services submit renewal applications for their broadcasting licences.
3. In response, I.T. Productions Ltd. (I.T. Productions) filed an application to renew the broadcasting licence for the commercial ethnic AM radio station CJRJ Vancouver, which expires 31 August 2020. The Commission received numerous interventions in support of this application.

#### **Background**

4. In Broadcasting Decision 2013-164, the Commission renewed the broadcasting licence for CJRJ for a short term due to the licensee's non-compliance with section 9(2) of the *Radio Regulations, 1986* (the Regulations) relating to the filing of annual returns, for the 2009-2010 broadcast year, and with its Canadian talent

development contribution commitments (over the licence term ending 31 March 2013).

5. In Broadcasting Decision 2017-454, the Commission renewed that broadcasting licence for a short-term due to the licensee's non-compliance with section 9(2) of the Regulations for the 2012-2013, 2014-2015 and 2015-2016 broadcast years and with CJRJ's condition of licence relating to Canadian content development (CCD) contributions.

### **Non-compliance**

6. In Broadcasting Notice of Consultation 2020-75, the Commission stated that the licensee was in apparent non-compliance with the following:
  - condition of licence 2 set out in the appendix to Broadcasting Decision 2017-454, relating to the requirement to direct programming to at least 11 cultural groups in at least 17 different languages in each broadcast week;
  - condition of licence 8 set out in the appendix to Broadcasting Decision 2017-454, relating to the requirement to make CCD contributions for the 2017-2018 broadcast year; and
  - section 9(3)(a) of the Regulations relating to the filing of an accurate self-assessment report.

### **Programming directed to cultural groups in different languages**

7. The broadcasting policy set out in section 3(1)(d)(iii) of the Act provides that the Canadian broadcasting system should serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Indigenous peoples within that society.
8. Consistent with this policy objective, and pursuant to its authority under section 9(1) of the Act, the Commission imposes conditions of licence on ethnic radio stations requiring them to direct programming to a variety of cultural groups in a variety of languages.
9. As set out in the appendix to Broadcasting Decision 2017-454, I.T. Productions is required to direct programming broadcast on CJRJ to at least 11 cultural groups in at least 17 different languages during each broadcast week. Based on an analysis of the materials provided by the licensee for the broadcast week of 10 to 16 February 2019, the Commission notes that, although programming was directed to more than the required 11 cultural groups, programming was only provided in 15 different languages.
10. Programming for 13 of the languages of broadcast is provided by third-party language producers. According to the licensee, in December 2018, the Filipino producer of that

group, who produces Tagalog-language programming, unexpectedly became ill. It noted that since the shows produced for CJRJ's Tagalog-language programming up until that point had been hour-long audio files that were time sensitive, the shows were not available for the licensee to repeat. The licensee added that it also did not have access to a library of songs that would enable it to produce its own show for the community by its staff. I.T. Productions stated that it immediately began its search for a replacement and chose the first producer that it felt met the quality standards it expected for its programming. It noted, however, that despite attempts to locate a replacement producer through its network of contacts, it was not able to find broadcasters and/or journalists with the required qualifications and who would be able to commit the amount of time needed to support the hour-long broadcast for certain languages, including Tagalog, in which programming was being provided by the above-noted Filipino producer.

11. Further, one of the shows that was broadcast on the Sunday of the above-noted broadcast week was not adequately serving the Dari-language community, one of the 17 languages of broadcast for the station. I.T. Productions stated that the producer of the program at that time wished to ensure that a growing demographic of the second-generation Persian/Dari population who speak more than 50% English at home were represented. According to the licensee, the producer considered that the use of English in his program would serve to educate the community on various current issues of interest, and would act as a bridge between the most influential players in different arenas of public life and the Persian/Dari-speaking communities. I.T. Productions added that the producer partnered with a local Persian newspaper to publish the translated transcript from the English-language radio program in order to ensure service to the older generations who did not speak much English.
12. I.T. Productions nevertheless acknowledged the situation and expressed its regrets over a two-month period during which there was a reduction in the number of languages in which CJRJ's programming was broadcast. It considered it highly unlikely that the same situation will reoccur, but admitted that there is still a possibility a producer could unexpectedly leave without providing adequate time to find a replacement. To that end, the licensee stated that it has been working with its third-party language producers to create an emergency show procedure, where producers are required to have three non-time sensitive programs and a music library for its staff to create programs for its communities if the need arises. It also noted that in late 2019, the producer for Dari-language programming, as well as Farsi- and Pashto-language programming, passed away, but that the station was able to continue meeting its programming requirements with the emergency programming resulting from the new procedure.
13. I.T. Productions added that it has found someone in the Croatian community who can provide an hour-long show on a weekly basis. Through more conversations with the community and the potential producer for that community, it learned that the Croatian community relies heavily on radio as a way to keep connected with members of the community and with the Canadian community as a whole. This Croatian producer started its show on the first Sunday of March 2019.

14. Finally, the licensee stated that over the last 13 years, there have been no complaints filed with the Commission in regard to CJRJ's programming. It stated that the Commission has never previously had an issue with the different elements of the condition of licence in question, that there has never been a negative intervention that specifies where the station's programming does not meet the Commission's guidelines, and that there have not been any complaints regarding the professionalism of its broadcasters. I.T. Productions stated that it has adhered to its conditions of licence in this regard, with the exception of the lapse identified above, and that it has taken steps to ensure the non-compliance is not repeated. In the licensee's view, a short-term renewal would be an onerous penalty relative to the temporary lapse.
15. In light of the above, the Commission finds the licensee in non-compliance with CJRJ's condition of licence relating to the requirement to direct programming to at least 11 cultural groups in at least 17 different languages in each broadcast week.

### **Canadian content development contributions**

16. Sections 3(1)(e) and 3(1)(s)(i) of the Act declare that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming and that private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them, contribute significantly to the creation and presentation of Canadian programming. In accordance with this aspect of the broadcasting policy and pursuant to its authority in section 9(1) of the Act, the Commission has imposed conditions of licence requiring programming undertakings to contribute in various ways to the creation of Canadian programming, including imposing CCD contribution requirements.
17. Consistent with this policy objective and pursuant to its authority to impose conditions of licence related to the circumstances of the licensee under section 9(1) of the Act, where licensees have experienced a shortfall in CCD contributions, the Commission has sought to remedy the harm caused to the broadcasting system by requiring additional contributions.
18. In the case of CJRJ, in order to address the harm caused by the licensee's non-compliance with CCD contribution requirements during the station's licence term ending 31 August 2017 as well as a shortfall stemming from that non-compliance, the Commission imposed the following condition of licence on the station, set out in Appendix 1 to Broadcasting Decision 2017-454:

8. Pursuant to this decision and in order to fulfill its outstanding commitments to Canadian content development (CCD) set out in *CJRJ Vancouver – Licence renewal*, Broadcasting Decision CRTC 2013-164, 28 March 2013, the licensee shall:

- devote at least \$67,379 to CCD in the remainder of the 2017-2018 broadcast year and in each of the 2018-2019 and 2019-2020 broadcast years;
- devote an additional \$35,000 to CCD for the remainder of the 2017-2018 broadcast year and in the 2018-2019 broadcast year; and
- file acceptable proof of payment of these CCD contributions by 30 November of each year.

19. Pursuant to this condition of licence, the licensee was required to make a total additional contribution of \$102,379 to CCD for the 2017-2018 broadcast year. According to Commission records, the licensee only made contributions totalling \$70,394, resulting in a shortfall of \$31,985. Although the licensee made up this shortfall, it did so during the 2018-2019 broadcast year, rather than during the broadcast year during which payment was due.
20. I.T. Productions stated that CJRJ has not been profitable since its licensing in 2006, and did not have the money at the time it was to make the required contribution for the 2017-2018 broadcast year. It noted past difficulties relating to ensuring the eligibility of certain CCD contributions, and challenges it faced stemming from the Commission's decision to impose additional CCD contributions to make up for disqualified contributions. In this regard, the licensee stated that its CCD contributions were made in good faith and that it never had the intention of being offside with its CCD commitments.
21. The licensee submitted, however, that it has made significant contributions towards supporting many important objectives of the Act. It argued that it provides a valuable and important service in Vancouver, presenting unbiased, informative and entertaining programs, and promoting local artists. The licensee added that it hires graduates of the British Columbia Institute of Technology's (BCIT) broadcast journalism program, thereby giving them first jobs along with the confidence to move up to mainstream broadcasters.
22. I.T. Productions stated that it is now in a financial position to ensure that it meets financial commitments in the future, including those relating to CCD. The licensee further noted that it pre-paid its required CCD contribution for the 2019-2020 broadcast year to demonstrate the seriousness of its commitment to meet its CCD contribution obligations. Finally, the licensee noted that all of its future CCD contributions would be made to FACTOR rather than to community initiatives, in order to avoid issues relating to eligibility and the documentation of contributions.
23. In regard to the present non-compliance, the licensee stated that being granted a full-term licence renewal would provide it with the opportunity to find financial success. It added that the imposition of any additional CCD obligations would be onerous, but that it would agree to the imposition of such obligations should the Commission

consider the measure appropriate. In this regard, the licensee stated that it would also direct those contributions to FACTOR.

24. In light of the above, the Commission finds the licensee in non-compliance with CJRJ's condition of licence relating to CCD contributions for the 2017-2018 broadcast year.

### **Self-assessment report**

25. 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.
26. Consistent with this authority, the Commission made section 9(3)(a) of the Regulations, which specifies that a licensee shall submit the information required by the station self-assessment report when requested by the Commission.
27. In Broadcasting Notice of Consultation 2020-75, the Commission stated that the licensee was in apparent non-compliance with section 9(3)(a) of the Regulations relating to the filing of a self-assessment report for CJRJ. Specifically, the Commission noted the following irregularities in the list of musical selections and the self-assessment report submitted by I.T. Productions for CJRJ for the 10 to 16 February 2019 broadcast week:
- number of musical selections broadcast during the broadcast week: the music list identified 1.4% more musical selections than did the self-assessment report (1308 versus 1290); and
  - number of Canadian musical selections broadcast during the broadcast week: the self-assessment report identified 4.0% more musical selections than did the music list (129 versus 124).
28. I.T. Productions stated that it asks all of its third-party language producers to properly identify songs in its system that are considered Canadian content. However, due to a misunderstanding in regard to what constitutes Canadian content, certain producers marked musical programming sections as Canadian content because their shows were produced in Canada. The licensee added that the total number of musical selections was inadvertently deflated because third-party language producers were marking certain programs as musical selections and others as host segments in the system. I.T. Productions stated that since it trusted the output of its automated system, it was unaware that certain musical and voice tracks were being input into its system with incorrect information. The licensee nevertheless acknowledged that it is responsible for all content broadcast on the station.
29. In regard to a specific musical selection that began at 5:58 a.m. and of which the majority was played after 6:00 a.m., I.T. Productions acknowledged that the song should have been counted as part of the total number of musical selections broadcast

during the broadcast day (i.e., from 6:00 a.m. to midnight). It noted that since the musical selection began before 6:00 a.m., it was not counted by the logging system and, consequently, in the self-assessment report. The licensee stated that, going forward, it would go through its music logs and compare those logs with the station's self-assessment report to ensure that any song of which the majority is played after 6:00 a.m. is counted in the report.

30. I.T. Productions acknowledged the importance of the self-assessment report and that the accuracy of the report is crucial. In this regard, the licensee noted that this is the first time that it as a company, as well as its third-party language producers, have had to deal with the Commission's MAPL<sup>1</sup> system, which is used to qualify musical selections as Canadian, with the concept of Canadian content, and with the musical selections identification system. It added that many of those producers have not dealt with these concepts in their home countries.
31. To address the situation, I.T. Productions stated that it has consulted with each of its third-party language producers to explain how to label Canadian musical selections and enter the information into its library system. In addition, the licensee filed with the Commission a process document that details how to enter music into the system with proper labeling so that the information in the system is as accurate as possible. The licensee further noted that it has made that document available to all staff and third-party language producers on its internal network, and has explained what qualifies as Canadian content using the MAPL identification system. With these changes to its system, the licensee stated that it will be able to provide a more accurate self-assessment report in the future.
32. In light of the above, the Commission finds the licensee in non-compliance with section 9(3)(a) of the Regulations.

### **Regulatory measures**

33. The Commission's approach to non-compliance by 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.
34. In regard to the non-compliance with CJRJ's condition of licence relating to the broadcast of programming serving various cultural groups in various languages, the Commission notes that the licensee took immediate action to ensure that the issues it faced would not happen in the future, by developing internal policies that would allow it to produce programming for all of the groups and languages it is required to serve in the event that one of its third-party language producers is unable to do so. In regard to the non-compliance relating to the Dari-language programming, the

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<sup>1</sup> See Broadcasting Regulatory Policy 2014-554.

Commission notes that it was the third-party language producer who made an intentional decision to produce its program in English. In the Commission's view, this is an isolated incident that should not reoccur with the implementation of the licensee's new policy and practices.

35. In regard to the licensee's non-compliance relating to CCD contribution requirements, the Commission notes that the full amount of the CCD contribution obligation, although not paid during the required broadcast year, was paid before the end of the current licence term (i.e., 31 August 2020). In the Commission's view, the measures put in place by the owner of the station and the licensee to secure funding and to ensure that all new contributions are directed to FACTOR should address past issues relating to the licensee's non-compliance with CCD requirements.
36. Finally, in regard to the licensee's non-compliance relating to the filing of a self-assessment report for the station, the Commission notes that the licensee took immediate action once being informed of the non-compliance by developing training materials to ensure that all of its third-party language producers had a full understanding of the Regulations. Further, the licensee has taken steps to review the results of its logging system to ensure that all songs are counted correctly. The Commission considers that this is an isolated incident and notes the safeguards put in place by the licensee to prevent this non-compliance from reoccurring in the future.
37. Notwithstanding the above, the Commission considers the above-noted instances of non-compliance to be serious matters, and notes that the licensee's non-compliance with requirements relating to CCD contributions is recurrent. In the Commission's view, it would therefore be appropriate to renew the broadcasting licence for CJRJ for a short-term period of three years, which will allow for an earlier review of the licensee's compliance with regulatory requirements.
38. In addition, given that this is the third consecutive licence term in which the licensee has been found in non-compliance with CCD contribution requirements, the Commission finds that it would be appropriate to require I.T. Productions to broadcast an on-air announcement regarding its non-compliance three times a day for five consecutive days within the 14-day period immediately following the issuance of the present decision. To confirm compliance with this requirement, the licensee must file with the Commission the audio recordings for the broadcast days during which the announcement was broadcast and a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CJRJ Vancouver*, which can be found in Appendix 2 to this decision. A **condition of licence** to that effect is set out in Appendix 1 to this decision.

## **Conclusion**

39. In light of all of the above, the Commission **renews** the broadcasting licence for the commercial ethnic AM radio programming undertaking CJRJ Vancouver from 1 September 2020 to 31 August 2023. The licensee shall adhere to the **conditions of licence** set out in Appendix 1 to this decision.



## Reminders

40. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. The submission of complete and accurate radio monitoring materials enables the Commission to conduct an analysis of a station's programming to verify compliance with regulatory obligations. The retention of these radio monitoring materials makes it possible for the Commission to investigate a station's programming in the case of complaints. As such, any licensee that does not file requested material in a timely manner, or does not file such material at all, affects the ability of the Commission to adequately perform its duty to independently confirm the licensee's adherence to regulatory and licence requirements. These filings also become important indicators of whether the licensee has the willingness, ability and knowledge necessary to bring itself into compliance and maintain such compliance.
41. The Commission reminds the licensee of its obligation to ensure that the programming broadcast on CJRJ is directed to 11 cultural groups in at least 17 different languages during each broadcast week.
42. The licensee must be in compliance with regulatory requirements at all times. Should the licensee continue to be in non-compliance with regulatory requirements, the Commission may consider recourse to additional measures during the next licence term, including the issuance of a mandatory order or non-renewal of the licence.
43. Pursuant to section 22 of the Act, the broadcasting licence renewed in this decision will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry lapses.

Secretary General

## Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2020-75, 26 February 2020, as amended by Broadcasting Notices of Consultation CRTC 2020-75-1, 23 March 2020; 2020-75-2, 7 April 2020; and 2020-75-3, 28 May 2020
- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2019-194, 3 June 2019
- *CJRJ Vancouver – Licence renewal*, Broadcasting Decision CRTC 2017-454, 19 December 2017
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014

- *CJRJ Vancouver – Licence renewal*, Broadcasting Decision CRTC 2013-164, 28 March 2013

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

## Appendix 1 to Broadcasting Decision CRTC 2020-303

### Terms, conditions of licence, expectation and encouragement for the commercial ethnic AM radio programming undertaking CJRJ Vancouver

#### 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, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. In each broadcast week, the licensee shall direct programming to at least 11 cultural groups in at least 17 different languages.
3. In each broadcast week, the licensee shall devote all of its programming to ethnic programs, and at least 95% of its programming to third-language programs, as defined in the *Radio Regulations, 1986*.
4. The licensee shall ensure that at least 73% of the ethnic programs broadcast in each broadcast week are in the Hindustani and Punjabi languages.
5. The licensee shall not devote any of the programming it broadcasts to programming in a Chinese language.
6. The licensee is exempt from the provisions of section 15 of the *Radio Regulations, 1986*.
7. a) The licensee shall broadcast the following announcement three times a day, distributed in a reasonable manner, between 6:00 a.m. and 10:00 a.m. or between 4:00 p.m. and 6:00 p.m., for five consecutive days, within the 14-day period immediately following the issuance of *CJRJ Vancouver – Licence renewal*, Broadcasting Decision CRTC 2020-303, 26 August 2020 (Broadcasting Decision 2020-303):

Radio frequencies are a limited public resource. Holding a broadcasting licence is a privilege, and broadcasters are required to abide by a number of regulations and conditions of licence in order to operate a radio station. In Broadcasting Decision 2020-303, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986* and its conditions of licence. The instance of non-compliance relating to its Canadian content development contributions occurred during the 2017-2018 broadcast year and is a recurring issue. CJRJ has put measures in place to ensure that the non-compliance in question does not reoccur.

b) The licensee shall provide to the Commission the audio recordings for the broadcast days during which the announcement was broadcast, and file a completed and signed *Attestation as to the broadcast of the non-compliance announcement on CJRJ Vancouver*, set out in Appendix 2 to Broadcasting Decision 2020-303, by no later than 14 days following the final broadcast of the announcement.

**Expectation**

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

**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 2020-303

### Attestation as to the broadcast of the non-compliance announcement on CJRJ Vancouver

In regard to the requirements set out in condition of licence 7 in Appendix 1 to *CJRJ Vancouver – Licence renewal*, Broadcasting Decision CRTC 2020-303, 26 August 2020 (Broadcasting Decision 2020-303), I, \_\_\_\_\_ (NAME), on behalf of \_\_\_\_\_ (LICENSEE), certify that the announcement regarding CJRJ Vancouver's non-compliance with its condition of licence relating to Canadian content development contributions was duly broadcast three times a day and distributed in a reasonable manner, between 6:00 a.m. and 10:00 a.m. or between 4:00 p.m. and 6:00 p.m., for five consecutive days, within the 14-day period immediately following the issuance of Broadcasting Decision 2020-303, as follows:

<b>First date of broadcast</b>		Time	1:	2:	3:
<b>Second date of broadcast</b>		Time	1:	2:	3:
<b>Third date of broadcast</b>		Time	1:	2:	3:
<b>Fourth date of broadcast</b>		Time	1:	2:	3:
<b>Fifth date of broadcast</b>		Time	1:	2:	3:

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Signature

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Date