



Broadcasting Decision CRTC 2021-58

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Reference: Part 1 application posted on 10 June 2020

Ottawa, 11 February 2021

JAZZ.FM91 Inc.

Toronto, Ontario

Public record for this application: 2020-0146-0

CJRT-FM Toronto – Licence amendment

*The Commission **denies** an application by JAZZ.FM91 Inc. to increase from 504 to 1,200 the maximum number of minutes of advertising that may be broadcast per broadcast week on its English-language radio station CJRT-FM Toronto.*

Background

1. In Broadcasting Decision 2013-719, the Commission renewed the broadcasting licence for the English-language radio station CJRT-FM Toronto. In that decision, the Commission also approved a request by the licensee, JAZZ.FM91 Inc. (JAZZ.FM91), to amend CJRT-FM's condition of licence relating to the broadcast of advertising in order to remove the limit of four minutes of advertising per hour, while retaining the limit of 504 minutes of advertising per broadcast week. In addition, the Commission approved a request by the licensee to exclude from that limit content drawn from subcategories 52 (Sponsor identification) and 53 (Promotion with sponsor mention).¹ The condition of licence currently reads as follows:

The licensee may broadcast a maximum of 504 minutes of advertising per broadcast week drawn from subcategory 51 (Commercial announcement), as set out in the appendix to *Revised content categories and sub-categories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010, as amended from time to time. Content drawn from subcategories 52 (Sponsor identification) and 53 (Promotion with sponsor mention) shall not be counted towards the total allowable advertising minutes.

2. In that decision, the Commission stated that the increased flexibility granted by the amended condition of licence would allow the licensee to concentrate advertising during certain hours of the day, without changing the total amount of advertising minutes allowed during the broadcast week. It also considered that approval of the requested amendment to remove the hourly advertising limit would have a minimal

¹ The content categories and subcategories for radio are set out in the appendix to Broadcasting Regulatory Policy 2010-819.

impact on other stations in the market served by CJRT-FM given that the station would continue to be limited to a maximum of 504 minutes of advertising per week.

Application

3. The Commission has the authority, pursuant to section 9(1) of the *Broadcasting Act* (the Act), to issue 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, as well as to amend those conditions on application by the licensee.
4. JAZZ.FM91 filed an application to amend the above-noted condition of licence in order to increase from 504 to 1,200² the maximum number of minutes of advertising that may be broadcast per broadcast week on CJRT-FM.
5. The licensee submitted that due to downward pressure on advertiser rates and diminished advertising budgets, reducing the restriction on its commercial inventory would allow the station to achieve financial viability. It added that the opportunity for increased inventory would have a positive long-term impact on CJRT-FM's financial resources, allowing the station to add back certain staffing positions that were removed due to financial challenges. In this regard, JAZZ.FM91 stated that it intends to add a morning show host, a program director and a creative/imaging director, with a view to improving overall service to the community served by the station. The licensee also noted that some of the advertising minutes may be used for contra arrangements, such as the exchange of advertising for the use of a venue for a live event.
6. JAZZ.FM91 cited numerous reasons for the poor financial performance of CJRT-FM, including donor fatigue, the increase in the popularity of streaming audio services, and the increased price competitiveness for radio advertising in the Toronto radio market. Further, the licensee stated that during the 2017-2018 and 2018-2019 broadcast years, workplace grievances leading to declines in donations, donor numbers and advertising revenues, and to the loss of a major advertiser, had a measurable negative impact on the station's revenues.
7. Should its application be approved, JAZZ.FM91 indicated that CJRT-FM's revenues would increase by approximately \$450,000 over the first three years following approval, which it acknowledged may seem low. It added, however, that it does not anticipate selling out the full 1,200 minutes of advertising per week in the short term. In this regard, the licensee noted that CJRT-FM currently operates at annual average advertising sellout rates of 75%, selling out its allotment for approximately only 12 weeks per year.
8. The Commission received interventions in support of this application from the Broadcast Advocacy Group and from individuals who are part of the Canadian

² For a broadcast week of 126 hours, 1,200 minutes amounts to 9.5 minutes per hour.

cultural community (including music teachers, musicians, and donors). The Commission also received an intervention from Dufferin Communications Inc. (Dufferin) opposing the application. JAZZ.FM91 replied to the intervention by Dufferin.³

Commission's analysis and decisions

9. After examining the record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:
 - whether the licensee has demonstrated an economic need for the requested amendment; and
 - whether approval of the requested amendment would have an undue negative financial impact on other stations in the market served by CJRT-FM.

Economic need for the requested amendment

Intervention

10. Dufferin questioned JAZZ.FM91's claim that there is an economic need for the proposed increase in CJRT-FM's advertising inventory. The intervener submitted that the station's rates for advertising spots are low, that it may not be pricing its advertising inventory in such a way as to maximize revenues, and that it may not be fully utilizing its current advertising allotment. Dufferin added that the declines in advertising and donor revenues that CJRT-FM experienced were more likely the result of the internal workplace and management issues faced by the station than a broader structural issue that would require the station to more than double its current commercial announcement allotment. It also noted that CJRT-FM benefits from being a not-for-profit "Other Special FM" station with charitable status, which includes the availability of a donor revenue stream and not having to fulfil the obligations set out under Broadcasting Public Notice 2006-158 (the 2006 Commercial Radio Policy).

Licensee's reply

11. In its reply, JAZZ.FM91 stated that its financial records for the past several years, which were filed with the Commission, show that CJRT-FM's current financial issues were incurred over a prolonged period of time, and that expenses have been cut, with no morning show host and no program or fundraising directors. The licensee

³ In its intervention, Dufferin suggested that JAZZ.FM91's amendment request would be more appropriately addressed as part of the commercial radio policy framework review (see Broadcasting Notice of Consultation 2020-374), arguing that the request raises policy issues. The Commission notes, however, that CJRT-FM operates under the category "Other Special FM," as defined in Public Notice 1988-78, and is therefore not considered to be a commercial radio station. Further, JAZZ.FM91's application does not challenge policies in place, but rather the particulars of an existing condition of licence of a single radio station licensee.

submitted that it clearly has a revenue problem, not a cost problem, stemming from market conditions and not internal matters.

12. In response to Dufferin's comment regarding rates for advertising spots, JAZZ.FM91 stated that it is selling CJRT-FM's advertising inventory at competitive rates that are far from the lowest in the market. To support this statement, the licensee filed a schedule used to sell radio advertising in the Toronto radio market. It added that the flexibility granted in Broadcasting Decision 2013-719 in regard to content drawn from subcategories 52 and 53 has done relatively little to alleviate its financial shortfalls, as few businesses will pay for sponsorship mentions alone.
13. In regard to Dufferin's statement that JAZZ.FM91, as a charitable organization, has an advantage with an additional revenue stream, the licensee noted that, as a registered charity, it must devote its resources to its charitable purposes and activities⁴ and cannot use donor money for any purpose it wishes.
14. In regard to the specific number of advertising minutes requested, JAZZ.FM91 reiterated that it has no intention of using the full 1,200 minutes in the short term, adding that it made more sense to set a reasonable upper limit rather than to have to return to the Commission in the future to seek further increases. The licensee stated that it is keenly aware of the need to keep its commercial load low enough to remain attractive to listeners while also earning enough revenues to operate the station.
15. In regard to the workplace grievances referred to in its application and noted by Dufferin in its intervention, JAZZ.FM91 stated that they relate to allegations of workplace harassment, bullying and general mismanagement involving certain senior management and directors of the station, which became public in June 2018 through newspaper reporting and social media attention. The licensee indicated that following these allegations, an independent investigator was retained and several employees were terminated, including popular on-air hosts. It added that as a result of these incidents, the station experienced, among other things, donor and advertiser defections, revelations of inadequate governance, loss of confidence in the incumbent board of directors and lawsuits. The licensee further noted that in February 2019, donor members voted to entirely replace the board of directors. JAZZ.FM91 submitted, however, that despite the above changes, it expects growth in donations to be modest for some time.
16. Finally, JAZZ.FM91 stated that the current COVID-19 pandemic has amplified its financial predicament.

Commission's analysis and decision

⁴ JAZZ.FM91's charitable purposes include activities such as Live Music and Education & Community Outreach, such as JAZZ Youth and Seminar Big Bands, Jazz 4 Kids, Jazzology, Music Therapy at St. Michael's Hospital, and Documentary Programming. It indicated that in the 2019 fiscal year, it spent \$1.6 million on charitable programs.

17. In order to verify the licensee's compliance with its condition of licence relating to advertising, Commission staff carried out a performance evaluation of CJRT-FM's programming for the 12 to 18 April 2020 broadcast week. Based on its analysis of the station's program log and the detailed advertising allocation provided by the licensee, Commission staff determined that the licensee appears to be in compliance with its advertising limit. In fact, according to the results of the evaluation, the station would have broadcast a total of 253 minutes of advertising that week, well below the 504 minutes afforded by its condition of licence. As such, there seems to be unused advertising inventory within CJRT-FM's allotted 504 minutes of advertising.
18. Nevertheless, the Commission recognizes the difficulties experienced by the licensee during the 2017-2018 and 2018-2019 broadcast years relating to the workplace grievances that occurred during that period. In this regard, the Commission notes that prior to the cited workplace grievances, CJRT-FM's revenues were increasing steadily, leading the station towards profitability. Moreover, if the market conditions cited by the licensee did have an impact, any such impact would have been felt prior to the 2017-2018 broadcast year. As such, it is reasonable to conclude that the majority of the station's revenue losses over the past two years can be attributed to the cited workplace grievances.
19. In regard to JAZZ.FM91's claim regarding the impact of the current COVID-19 pandemic, the Commission notes that the licensee did not submit any additional figures to show how the situation has amplified its financial predicament. Nevertheless, the Commission is of the view that the current public health crisis has placed added strain on all broadcasters.
20. Finally, JAZZ.FM91 was questioned as to why the flexibility granted in Broadcasting Decision 2013-719 proved insufficient to compensate for CJRT-FM's decline in revenues. In its reply, the licensee stated that its amendment request at the time was not to ensure the station's financial viability, but to allow for more programming flexibility. It added that while additional flexibility may have been an adequate solution for the issues of 2013, the current limit on advertising minutes hampers the station's financial viability given recent and significant downward pressure on advertising rates, increasing donor fatigue, the shift of advertising budgets to online platforms and increases in the station's fixed costs.
21. While it cannot differentiate between the negative impact of market forces from the negative impact stemming from the cited workplace grievances, the Commission nevertheless finds, in light of the above, that JAZZ.FM91 has demonstrated a financial need for the requested amendment to CJRT-FM's condition of licence relating to advertising.

Financial impact of the requested amendment on other stations in the market

Intervention

22. In its intervention, Dufferin expressed concern over the undue negative financial impact that approval of the requested increase in CJRT-FM's advertising allotment

would have on incumbent radio stations in the Toronto radio market. It argued that although CJRT-FM's incremental revenues resulting from approval of the requested amendment would appear inconsequential when weighed against the market's total advertising revenues, an impact would be felt by the market's smaller players and would be compounded by the effects of the current public health crisis. In the intervener's view, only the larger, more dominant players in the market would be unaffected by the requested amendment.

Reply

23. In its reply, JAZZ.FM91 noted that its request would bring its conditions of licence closer to those that the Commission imposed upon community stations when it removed their limit on advertising minutes more than 20 years ago to support small non-profit stations serving diverse and unique communities.⁵

Commission's analysis and decision

24. In 2019, the 35 commercial radio stations operating in the Toronto radio market generated \$255 million in advertising revenues and reported an average profit before interest and taxes (PBIT) margin of 27.1%. This figure reflects the situation of the market's four largest operators for that year (i.e., Bell, Corus, Rogers and Stingray), who currently operate 13 commercial radio stations in the market. Although the remaining 22 smaller commercial radio stations collectively posted a positive PBIT margin in 2019, 11 of those stations were unprofitable, a number that could be even higher in 2020 due to the current health crisis. In the Commission's view, any negative impact stemming from approval of the requested increase in CJRT-FM's advertising minutes would be felt more heavily by these already unprofitable smaller stations, given that they would not benefit from the synergies and resources to which large broadcasters have access.
25. The Commission noted that the current public health crisis has placed many smaller radio operators, including JAZZ.FM91 for its station CJRT-FM, in an economic predicament. What might ordinarily be considered a tolerable impact may, for the current broadcast year, well prove to be undue for certain incumbent players in the Toronto radio market. In the Commission's view, the threshold for what qualifies as undue impact is therefore lower than what it would be under more normal circumstances. Compounding this is the possibility that JAZZ.FM91 would be enabled to garner greater revenues should the requested amendment be approved. In this regard, the Commission notes that although JAZZ.FM91 does not anticipate that

⁵ In Public Notice 2000-13, the Commission eliminated all restrictions on the amount of advertising that may be broadcast by community stations, believing that if community stations are to fulfil their intended role and mandate, they must have adequate, more secure and consistent revenue streams to enable better planning. The Commission also believed that placing limits on advertising is not the most effective way to guarantee that community stations offer programming that differs in style and substance from that provided by other types of stations. The Commission considered that simple and effective programming requirements will achieve this objective.

it would sell 100% of its advertising inventory at the new threshold, there would be nothing to prevent it from doing so.

26. In regard to JAZZ.FM91's intention to use some of the advertising minutes for contra arrangements, which would not necessarily have been captured in the licensee's projections, the Commission notes that such arrangements could have a financial impact on incumbent players in the market, as would traditional advertising sales.
27. In light of the above, the Commission finds that approval of JAZZ.FM91's requested amendment would have an undue negative financial impact on incumbent radio stations in the Toronto market, more specifically, the market's smaller radio operators.

Conclusion

28. In light of the above, the Commission **denies** the application by JAZZ.FM91 Inc. to amend the broadcasting licence for the English-language radio programming undertaking CJRT-FM Toronto in order to amend that station's condition of licence relating to advertising to increase from 504 to 1,200 the maximum number of minutes of advertising that may be broadcast on the station per broadcast week.

Secretary General

Related documents

- *Call for comments – Commercial radio policy framework review*, Broadcasting Notice of Consultation CRTC 2020-374, 12 November 2020
- *CJRT-FM Toronto – Licence renewal and amendment*, Broadcasting Decision CRTC 2013-719, 18 December 2013
- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Community radio policy*, Public Notice CRTC 2000-13, 28 January 2000
- *Educational and institutional radio – Adoption of the proposed policy*, Public Notice CRTC 1988-78, 17 May 1988