



Broadcasting Decision CRTC 2022-136

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Ottawa, 26 May 2022

CJRO Radio

Carlsbad Springs, Vars, Embrun and Sarsfield, Ontario

Public record: 2021-0695-5

Public hearing in the National Capital Region

31 March 2022

CJRO-FM Carlsbad Springs and its transmitters CJRO-FM-1 Vars, CJRO-FM-2 Embrun and CJRO-FM-3 Sarsfield – Acquisition of assets

Summary

The Commission **approves** an application by CJRO Radio for authorization to acquire from Carlsbad Springs Community Association the assets of the low-power English- and French-language community radio station CJRO-FM Carlsbad Springs, Ontario, and its transmitters CJRO-FM-1 Vars, CJRO-FM-2 Embrun and CJRO-FM-3 Sarsfield, Ontario, and to obtain a new broadcasting licence to continue the operation of the station.

Application

1. CJRO Radio filed an application for authorization to acquire from Carlsbad Springs Community Association (CSCA) the assets of the low-power English- and French-language community radio station CJRO-FM Carlsbad Springs, Ontario, and its transmitters CJRO-FM-1 Vars, CJRO-FM-2 Embrun and CJRO-FM-3 Sarsfield, Ontario, and for a new broadcasting licence to continue the operation of the undertaking under the same terms and conditions as those in effect under the current licence.
2. CJRO Radio is a newly incorporated non-profit corporation, which is controlled by its board of directors. The sole purpose of CJRO Radio is to operate CJRO-FM and its transmitters for the benefit of the communities it serves.
3. CSCA is also a non-profit corporation effectively controlled by its board of directors.
4. On 17 June 2021, CSCA approved the transfer of the assets for CJRO-FM and its transmitters to CJRO Radio. CJRO Radio stated that CSCA did not wish to continue to manage the station as the addition of a third transmitter meant that CJRO-FM was now available outside of CSCA's mandated area of Carlsbad Springs. In addition, the CSCA's mandate encompasses more than managing CJRO-FM and having a separate entity specifically focussed on operating CJRO-FM would be in the best interest of the

community. As such, the transaction only involved the transfer of assets and control of CJRO-FM and its transmitters without any monetary exchange.

5. Following the close of the transaction, CJRO Radio would become the licensee of CJRO-FM and its transmitters.
6. The Commission received an intervention in support of this application from the National Campus and Community Radio Association. The intervener indicated that this transaction is in the public interest and it ensures that local residents have an opportunity to enjoy and participate in locally-produced radio.

Background

7. In Broadcasting Decision 2019-133, the Commission approved an application by CSCA for a broadcasting licence to operate a new low-power English- and French-language community FM radio station in Carlsbad Springs and a low-power FM transmitter in Vars.
8. In Broadcasting Decision 2020-369, the Commission approved an application by CSCA for a new low-power transmitter in Embrun to rebroadcast the programming of CJRO-FM. To ensure that the Embrun community was represented in all aspects of CJRO-FM's operation, CSCA proposed to seek two additional directors from Embrun who would have voting authority for matters pertaining to the radio station such as funding, programming and other broadcasting decisions. The Commission was satisfied that members of the Embrun community would be represented and involved in the operations, management and control of CJRO-FM.
9. In Broadcasting Decision 2021-336, the Commission approved an application by the CSCA to operate a new low-power transmitter in Sarsfield to rebroadcast the programming of CJRO-FM. CSCA proposed to add an additional director from Sarsfield to ensure representation of the new community served. The Commission was satisfied by CSCA's proposal.
10. When considering the above-mentioned application, the Commission required CSCA to amend its bylaws so that it ensures representation from the communities served by the undertaking.

Regulatory framework

11. Pursuant to subsection 5(1) of the *Broadcasting Act* (the Act), the Commission's mandate is to regulate and supervise all aspects of the Canadian broadcasting system in the public interest. The public interest is reflected in the numerous objectives of the Act and of the Canadian broadcasting policy set out in subsection 3(1) of the Act. The review of ownership transactions in the public interest forms part of the Commission's regulatory and supervisory mandate under the Act.

12. Subsection 11(4) of the *Radio Regulations, 1986* (the Regulations) requires a licensee to obtain prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in a change, by whatever means, of the effective control of its undertaking.
13. As set out in Broadcasting Regulatory Policy 2014-459, the Commission requires applicants to pay tangible benefits when a change in ownership leads to a change in the effective control of a broadcasting undertaking. The payment of tangible benefits is not required for a change in the effective control of a community radio station as they are not commercial stations.

Issues

14. 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:
 - public interest impact on the broadcasting system;
 - licence trafficking; and
 - apparent non-compliance with broadcasting regulatory obligations.

Public interest and impact on the broadcasting system

15. To determine whether a proposed transaction is in the public interest, the Commission takes into account a wide set of factors set out in the Act, including the nature of programming and service to the communities involved as well as regional, social, cultural, economic and financial considerations. The Commission must be persuaded that the proposed transaction benefits Canadians and the broadcasting system.
16. CJRO-FM and its transmitters broadcast English- and French-language programming in the small communities of Carlsbad Springs, Vars, Embrun and Sarsfield.
17. In its application, CJRO Radio stated that the rationale for the transaction was that CSCA did not intend to continue managing the operations of CJRO-FM as the addition of new transmitters meant that the station was now available outside its mandated area of Carlsbad Springs.
18. The Commission notes that CJRO Radio's board of directors come from the communities that are served by the undertaking. As per the bylaw, at least two members represent Carlsbad Springs, two members represent Vars, two members represent Embrun and two members represent Sarsfield at all times.
19. In the Commission's view, CJRO Radio's board of directors is consistent with Broadcasting Decisions 2019-133, 2020-369 and 2021-336 and gives a voice to the communities of Carlsbad Springs, Vars, Embrun and Sarsfield. As such, CJRO Radio is in a better position to serve and represent these communities than it was under CSCA's ownership.

20. In light of the above, the Commission finds that the transaction is in the public interest.

Licence trafficking

21. The term “licence trafficking” refers to ownership transactions involving the sale or change in the effective control of a broadcasting undertaking within its first licence term or shortly after the vendor acquired the broadcasting undertaking or its effective control.

22. In Broadcasting Public Notice 2008-4, the Commission stated that a broadcasting licence was a privilege and the decision to award a licence is based on the merits of the application. Consequently, the sale of a newly licensed broadcasting undertaking brings into question the original licensing process. In order to ensure the integrity of the licencing process, the Commission reaffirmed the need for the licence trafficking policy.

23. In Broadcasting Information Bulletin 2010-220, the Commission established new guidelines for the application of the licence trafficking policy. The Commission stated that the transactions involving a licence granted through a non-competitive process will be excluded from the application of the licence trafficking policy since such transactions do not undermine the integrity of the licensing process as the Commission did not have to choose among competing applications when approving the original application.

24. The Commission notes that a licence was awarded to CSCA in 2019 and the station was launched on 11 January 2020. However, the licence was not awarded following a competitive process. Accordingly, the Commission is of the view that this transaction does not raise issues with regards to the licence trafficking policy.

Apparent non-compliance with broadcasting regulatory obligations

25. The Commission reviewed CJRO-FM’s compliance with its regulatory requirements. It found that CSCA proceeded with the transfer of assets prior to obtaining an approval from the Commission. As such, the Commission considers that CSCA is in non-compliance with subsection 11(4) of the Regulations.

26. The Commission also considers CSCA in non-compliance with condition of licence 1 set out in the broadcasting licence for CJRO-FM which states:

Except as authorized by the Commission, this broadcasting undertaking shall be operated in fact by the licensee itself. The licence cannot be transferred or assigned.

27. 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, the arguments provide by the licensee and the actions taken to rectify the situation are also considered.

28. The Commission is of the view that the licensee acted in good faith and that the situation had minimal negative impact on the broadcasting system.

29. In light of the above, the Commission finds CSCA in non-compliance with subsection 11(4) of the Regulations and with condition of licence 1. However, the Commission considers that no further action is required.

Conclusion

30. In light of all of the above, the Commission **approves** the application by CJRO Radio for authority to acquire from CSCA the assets of the low-power English- and French-language community radio station CJRO-FM Carlsbad Springs, Ontario, and its transmitters CJRO-FM-1 Vars, CJRO-FM-2 Embrun and CJRO-FM-3 Sarsfield, Ontario.

31. Upon surrender of the current licence issued to CSCA, the Commission will issue a new broadcasting licence to CJRO Radio, which will expire 31 August 2025. The terms and **conditions of licence** for this station are set out in the appendix to this decision.

Reminder

32. Pursuant to subsection 11(4) of the Regulations, except as otherwise provided pursuant to a condition of licence, a licensee shall obtain the prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in a change, by whatever means, of the effective control of its undertaking.

Secretary General

Related documents

- *CJRO-FM Carlsbad Springs – New transmitter in Sarsfield*, Broadcasting Decision CRTC 2021-336, 4 October 2021
- *CJRO-FM Carlsbad Springs – New transmitter in Embrun*, Broadcasting Decision CRTC 2020-369, 9 November 2020
- *Community radio station in Carlsbad Springs*, Broadcasting Decision CRTC 2019-133, 7 May 2019
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Revised criteria for the application of the licence trafficking policy*, Broadcasting Information Bulletin CRTC 2010-220, 19 April 2010
- *Diversity of voices - Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2022-136

Terms, conditions of licence, expectation and encouragements for the low-power English- and French-language community FM radio station CJRO-FM Carlsbad Springs, Ontario, and its rebroadcasting transmitters CJRO-FM-1 Vars, CJRO-FM-2 Embrun and CJRO-FM-3 Sarsfield, Ontario

Terms

The licence will expire 31 August 2025.

Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in *Standard conditions of licence for campus and community radio stations*, Broadcasting Regulatory Policy CRTC 2012-304, 22 May 2012, as well as to the conditions of licence set out in the broadcasting licence for the undertaking.

Expectation

As set out in *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010, the Commission expects all community and campus licensees to file yearly updates on the composition of their boards of directors. These annual updates can be submitted at the time of submission of annual returns, following annual board of directors' election, or at any other time. As noted in Appendix 3 to that policy, licensees may submit such documentation via the Commission's website.

Encouragements

The Commission considers that community radio stations should be particularly sensitive to employment equity issues in order to reflect fully the communities they serve. It encourages the licensee to consider these issues in its hiring practices and in all other aspects of its management of human resources.

The Commission encourages the licensee to broadcast live programming.