



Broadcasting Decision CRTC 2013-123

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Route reference: 2012-370

Ottawa, 14 March 2013

RNC MEDIA Inc.
Montréal, Quebec

Application 2011-1650-0, received 20 December 2011
Public Hearing in Montréal, Quebec
10 September 2012

CKLX-FM Montréal – Licence amendments

*Due to the conditions of the Montréal radio market and the licensee's non-compliance, the Commission **denies** the application by RNC MEDIA Inc. to convert the specialty format of the French-language commercial radio station CKLX-FM Montréal, Quebec, focused on jazz and blues, to a specialty spoken word format.*

The application

1. The Commission received an application from RNC MEDIA Inc. (RNC) to convert the current specialty format of the French-language commercial radio programming undertaking CKLX-FM Montréal, Quebec, focused on jazz and blues, to a specialty spoken word format.
2. To do this, RNC proposed to amend the broadcasting licence for CKLX-FM by deleting conditions of licence 3, 4 and 5, which are set out in Broadcasting Decision 2010-585, according to which the licensee must devote:
 - a minimum of 70% of the musical programming broadcast to musical selections from content subcategory 34 (Jazz and blues).
 - a minimum of 45% of all category 2 (Popular Music) musical selections aired during the broadcast week to Canadian selections broadcast in their entirety.
 - a minimum of 35% of all category 3 (Special Interest Music) musical selections aired during the broadcast week to Canadian selections, to be scheduled in a reasonable manner throughout the broadcast day.
3. Those conditions of licence would be replaced by the following condition of licence:

The licensee shall devote a minimum of 50% of the programming broadcast during each broadcast week to programs drawn from category 1 (Spoken word).

Background

4. The licensee stated that CKLX-FM continues to encounter significant financial losses relating to the non-profitability of the jazz and blues music format in the Montréal region, citing, among other things, the lack of new original jazz music. The licensee noted that there is currently only one FM radio station devoted to spoken word programming in Montréal (CHMP-FM Montréal). RNC therefore submitted that the limited number of spoken word radio stations, combined with its own experience with the spoken word format elsewhere in Quebec should enable it to make CKLX-FM profitable.
5. The present application was initially published as part of a public process under Part 1 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (Rules of Procedure). Given the number of interventions received in the initial process and the scope of the requested amendments, the application was placed on the 10 September 2012 public hearing in Montréal (Broadcasting Notice of Consultation 2012-370) as a non-appearing item.

Interventions and replies

6. The Commission received interventions in opposition to this application, from the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), the Association des radiodiffuseurs communautaires du Québec (ARCQ), and various individuals, among others. The Commission also received comments, interventions in support of the application, a complaint (including a petition) from an individual and a response from TTP Media¹ in opposition to the application. The complete public record for this application can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

TTP Media

7. TTP Media admitted that the jazz and blues format does not easily attract sufficiently large audiences. According to TTP Media, certain markets that are smaller than the Montréal radio market have a larger selection of radio formats and content. TTP Media expressed the view that the Commission should authorize RNC to change its existing music format to one not currently offered in the Montréal radio market, rather than to a spoken word format.
8. TTP Media submitted that approval of RNC's application would change the conditions of the market and could harm the implementation of its new French-language spoken word AM radio station approved in Broadcasting Decision 2011-721. TTP Media further submitted that RNC would have a clear advantage by operating a station with a spoken word format on the FM band.

¹ 7954689 Canada Inc., carrying on business as Tietolman Tétrault Pancholy Media Inc.

RNC's reply

9. RNC submitted that the AM and FM radio markets are quite distinct. RNC therefore stated that the proposed change, if approved, would have no impact on the profitability of TTP Media's AM radio station.
10. Moreover, RNC recalled that when the licence was granted to TTP Media, the Commission determined that the Montréal radio market was capable of supporting the entry of at least one other commercial AM radio station, despite the elevated level of competition that exists. RNC indicated that the proposed change would not have a significant effect on the profitability of existing FM stations and that it would have no impact on the AM radio stations.

Association québécoise de l'industrie du disque, du spectacle et de la vidéo

11. ADISQ submitted that a radio station with a specialty music format does not necessarily generate the same profits as a non-specialty commercial radio station, given that its audience is more limited. However, ADISQ noted that in 2003, when it was granted its licence, RNC argued that jazz was much more popular in the French-language market in Montréal than in the rest of Quebec or Canada.
12. ADISQ specified that in Quebec alone there are a significant number of jazz albums produced every year and noted that Montréal hosts a major jazz festival every year. ADISQ therefore disagreed with RNC's argument that there is a lack of new original jazz music.
13. ADISQ further considered that despite the size of the French-language radio market in Montréal, it already has a limited number of music-based radio stations, which would drop from seven to six if the present application were approved. According to ADISQ, jazz radio stations that have abandoned their format elsewhere in Canada have remained music stations and are committed to continue giving jazz a place in their programming.

RNC's reply

14. RNC specified that radio constitutes an important tool for the expansion of the local music industry, by its role in promoting and discovering music, but that for it to endure, each radio broadcaster must cover its costs. RNC recalled that it had voiced this concern in its supplementary brief at the time of the renewal of its licence in 2009, and that at that time it was studying various options, including a change to CKLX-FM's music format.
15. RNC expressed the view that the popularity of the Montréal Jazz Festival (the Festival) does not translate into a support for jazz over the remainder of the year. Further, RNC confirmed that La Société Spectra-Scène inc., which operates the Festival, was RNC's partner, but that along the way it pulled out of the partnership due to the station's financial difficulties. Finally, RNC indicated that even the Festival has made a shift towards popular and hybrid music during the last few years, citing as

an example the 2010 edition, which put into the spotlight artists such as Smokey Robinson, Lionel Richie and the Doobie Brothers.

Association des radiodiffuseurs communautaires du Québec

16. The ARCQ indicated that the change in format proposed by RNC could have negative consequences on the already fragile revenues of community radio stations in the Montréal radio market, specifically, Cinq-FM and CIBL-FM Montréal, CKVL-FM Lasalle, CHAA-FM Longueuil and CHAI-FM Châteauguay. In addition, community radio stations have seen their advertising revenue decrease or stall over the past few years, and must work harder in order to maintain and develop those revenues in a market that is already extremely competitive.

RNC's reply

17. RNC expressed great sympathy for community radio, but considered that the financial viability of community radio should not dictate the behaviour of commercial stations that are in serious deficit, especially given their very different respective mandates.

Interventions from individuals

18. In general, individuals seemed of the view that RNC is attempting to introduce its "Radio X" format into the Montréal market. This format is offered in the Québec market and features a strong spoken word programming presence and music elements composed primarily of rock music. Some opposed the application because they did not want the entry of a Radio X type station in Montréal, while others expressed the need to keep a jazz music station in Montréal.

RNC's reply

19. RNC submitted that Montréalers have not given sufficient support to CKLX-FM and its service "Planète Jazz" in recent years. RNC specified in this regard that the annual revenues of Planète Jazz are well below \$1 million, approximately 18% of the revenues set out in the original business plan. This under-performance has generated a cumulative shortfall in net income of almost \$6 million.

Complaint relating to changes to CKLX-FM's programming and the shutting down of its website

20. The Commission received a complaint from Mr. Jean Laplante, dated 29 August 2012, accompanied by a petition bearing over 4,000 signatures. The complainant emphasized the importance of the station's role in the promotion of Canadian artists and the diversity that it brings to the Montréal radio market.

21. Moreover, the complainant alleged that Radio X's programming has replaced that of Planète Jazz without listeners being warned beforehand, which, in his view, violates Commission regulations. More specifically, the complainant alleged that:

- RNC neither broadcast over the air nor posted on its website a notice of change or of a hearing in regard to the amendment to its licence;
 - the website for Planète Jazz was shut down; and
 - these changes were implemented after the 9 August 2012 deadline for the submission of interventions.
22. In a letter dated 7 September 2012, the Commission requested that RNC respond to the complaint and indicate whether it was in compliance with the obligation of applicants to post notices of consultation, as set out in section 35 of the Rules of Procedure.
23. In a letter dated 10 September 2012, RNC responded to Mr. Laplante's allegations concerning the change to CKLX-FM's programming indicating that the decision to change the station's format had been under consideration for a long time. RNC stated that CKLX-FM was having financial difficulties and the jazz format does not attract a large enough audience to be viable. Moreover, the station had accumulated a negative profit before interest and tax margin during its first five years of operation. RNC also referenced cases where the Commission had approved applications similar to its own.
24. In regard to the requirement set out in paragraph 35 of the Rules of Procedure, RNC affirmed its compliance with the current regulations for publication of notices of consultation and that the station's website had been modified on 22 August 2012, 13 days after the deadline for the submission of interventions.

Commission's analysis and decisions

25. After examining the application in accordance with the applicable policies and regulations, the Commission considers that the issues it must address are the following:
- the financial need justifying the proposed amendment;
 - the impact of the proposed amendment on existing stations and the station yet to be launched by TTP Media; and
 - the licensee's apparent non-compliance with the *Radio Regulations 1986* (the Regulations) and its conditions of licence.

Financial need justifying the proposed amendment

26. The Commission notes that CKLX-FM's total revenues have decreased every year since 2007. In addition, the station has recorded negative profit margins each year since its launch.

27. While RNC did not submit revenue projections reflecting the consequences of a denial of its proposed amendment, the Commission notes that RNC stated that it would have to consider shutting down CKLX-FM if its application were denied.
28. Given the station's current performance and the possibility of the station shutting down if the application is denied, the Commission concludes that the licensee has demonstrated a real financial need justifying the proposed format change. In all probability, the current market shares and revenues that the station is currently generating under the Jazz and Blues format are not sufficient to ensure the long-term financial viability of the station.

Impact of the proposed amendment on existing stations and the station yet to be launched by TTP Media

Impact on commercial radio stations currently in operation

29. The French-language radio market in Montréal includes ten commercial stations and two Canadian Broadcasting Corporation (CBC) stations, among others. Astral and Cogeco are the two dominant players in this market, controlling six of the ten commercial radio stations operating there. In most cases, these stations have the largest market shares.
30. The other commercial stations operating in this market, which do not belong to large ownership groups, post numbers that are much more modest, both in terms of market share and generated revenue.
31. In its amendment application, RNC submitted its market share projections for the station on the basis of the proposed format. It estimated that with a spoken word format, its total tuning share would be 2% in its first year of operation, reaching a maximum of 4% in the third year.
32. The Commission notes that, according to RNC, the increase in CKLX-FM's tuning share resulting from the proposed music format change would occur mainly at the expense of stations operated by Astral and Cogeco and, to a lesser extent, by the CBC station CBF-FM Montréal. In addition, RNC does not expect any impact on stations not belonging to large ownership groups.
33. There is currently only one commercial spoken word radio station in the Montréal French-language market, CHMP-FM, which is operated by Cogeco. In the Commission's view, given its format, CHMP-FM is the station most likely to be affected by approval of RNC's amendment application. The Commission notes however that CHMP-FM is in good financial shape and that it is currently the most listened-to station in the entire Montréal French-language market, posting a market share of 22.5% in fall 2012.
34. Therefore, the Commission considers that the impact in terms of tuning share loss would be minimal and would primarily affect the stations that are financially sound. Finally, the Commission notes that, according to its programming analysis,

CKLX-FM already broadcasts spoken word content, which limits the potential impact of the proposed amendments on existing stations.

35. In light of the above, the Commission considers that approval of RNC's application would not have an undue impact on the commercial radio stations currently serving Montréal's French-language market, including CHMP-FM.

Impact on the approved station that is not yet in operation in the market

36. The Commission recently granted TTP Media a broadcasting licence to operate a French-language commercial AM radio station in Montréal at 940 kHz that will offer a spoken word format focusing on news, information, public affairs and debates.² The Commission notes that this station is not yet in operation, but should be on the air by fall 2013, unless it files with an application for an extension. As such, TTP Media should soon begin operating its first radio station, which will be in the Montréal French-language market on the AM band.

37. The Commission considers that TTP Media will be entering a market that is already highly competitive and dominated by two multi-station groups, Astral and Cogeco. These experienced groups benefit from sales synergies and operate stations that are well established in Montréal. The Commission notes in particular that the TTP Media station will face stiff competition from CHMP-FM, which is well known and well established with a listening audience seeking French-language spoken word content. Finally, the Commission reiterates that, unlike CHMP-FM, the TTP Media station will operate on the AM band, and notes this will add another level of difficulty for TTP Media, which is trying to establish itself in the market.

38. Although the Commission is of the view that approval of the application to change CKLX-FM's music format would only have a limited impact on the stations now operating in the Montréal French-language radio market, it considers that such approval would represent an additional challenge to TTP Media's station. In fact, CKLX-FM would become an additional direct competitor, benefiting from its established position in the market and from the advantages that come with operating on the FM band. Consequently, approval of the present application could significantly limit TTP Media's ability to generate the projected revenue for its future French-language station and reach its financial and market share objectives. The Commission concludes that approval of RNC's application could change the market conditions in a way that could harm TTP Media's authorized station.

Impact on the community stations currently in operation

39. The Commission notes the intervention submitted by the ARCQ, in which it indicated that the proposed amendment for CKLX-FM could have detrimental consequences for the community stations currently operating in the Montréal radio market.

² See Broadcasting Decision 2011-721.

40. The Commission notes, however, that the financial viability of community stations seems to be particularly tied to the ability to generate revenue from sources other than the sale of advertising. These sources, which include government grants, account for a significant share of the total revenue of community radio stations and have been more variable over the last five years. However, as a commercial radio station, CKLX-FM relies almost exclusively on revenue from local and national advertising sales.
41. The Commission therefore considers that the proposed format change for CKLX-FM would only have a limited impact on the existing community stations in the Montréal radio market.

The licensee's apparent non-compliance with the *Radio Regulations, 1986* and its conditions of licence

Regulatory framework

42. In addition to their conditions of licence, licensees of French-language radio stations have the following obligations pursuant to the Regulations:
- to devote at least 65% of vocal musical selections from content category 2 to musical selections in the French language broadcast in their entirety (section 2.2(5));
 - to retain a clear and intelligible tape recording or other exact copy of all matter broadcast, and furnish a copy upon Commission request (sections 8(5) and 8(6)); and
 - to submit, upon Commission request, a list of the musical selections broadcast during a monitoring period (section 9(3)(b)).
43. Further, CKLX-FM, as a radio station operating with a specialty format, is subject to particular conditions of licence governing its programming, including the quantity of musical selections drawn from content category 3 (which includes content subcategory 34) that must be broadcast.

Examination of CKLX-FM's programming (logger tapes)

44. The Commission requested that the licensee submit logger tapes, the music list and the program register for CKLX-FM for the 19 to 25 August 2012 broadcast week.
45. The Commission examined the programming and musical selections broadcast by the station during that broadcast week to determine whether the licensee was in compliance with its obligations relating to the broadcast of spoken word programming and of French-language vocal music (FVM) selections, as well as with its conditions of licence relating to the broadcast of content subcategory 34 musical selections and Canadian musical selections.

46. In a letter to the licensee dated 25 September 2012, the Commission noted that RNC had not identified the FVM or the content category 3 musical selections, as required by section 9(3)(b) of the Regulations. In addition, the Commission noted that the files submitted for 22 August 2012 were illegible and that the licensee therefore appeared to be in non-compliance with sections 8(5) and 8(6) of the Regulations.
47. In reply to its letter, the Commission received the missing materials from the licensee on 28 September 2012.
48. Following the analysis of the logger tapes and of the documents associated with CKLX-FM's programming, the Commission sent another letter to the licensee dated 9 October 2012, raising the following points:
- Several musical selections identified as content category 3 selections appeared on a hits charts, and as such are content category 2 musical selections.³
 - As a result, the quantity of content category 2 FVM selections was 44.5%, whereas the level required by section 2.2(5) of the Regulations is set at 65% (this reduction in the level of FVM occurred because the majority of musical selections moving from content category 3 to content category 2 were English-language selections, which reduced the percentage of content category 2 FVM selections broadcast).
 - The level of content category 3 music broadcast rose to 59.5%. Given that content category 3 includes, content subcategory 34, it is impossible that the station reached the 70% level for musical selections broadcast from this subcategory, as required by condition of licence.
49. In a letter dated 18 October 2012, the licensee disagreed with the methodology used by the Commission to analyze the station's programming in terms of content subcategory 34 musical selections and FVM selections. It submitted that its self-evaluation and its own calculations should take precedence, and that it is not in non-compliance with its conditions of licence and other obligations. Consequently, RNC did not propose any measures to ensure its compliance in the future.
50. On 18 October 2012, RNC filed additional information relating to the station's programming with the Commission, including a list of FVM selections broadcast by CKLX-FM. Given this information and its final analysis of CKLX-FM's programming, the Commission concludes that for the 19 to 25 August 2012 broadcast week, the quantity of FVM selections from content category 2 broadcast by the station was 46.6%, while the level of content category 3 musical selections broadcast was 58.4%.

³In Broadcasting Regulatory Policy 2010-819, the Commission defined the content categories and subcategories for radio. According to this regulatory policy, musical selections identified as content category 3 musical selections but that have appeared in the charts automatically become content category 2 music selections.

Commission's analysis

51. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach for dealing with non-compliance by radio stations. In particular, the Commission indicated that each instance of non-compliance is evaluated in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The Commission also indicated that it would consider the circumstances leading to the instances of non-compliance in question, the arguments provided by the licensee and the measures taken to rectify the situation.
52. The Commission analyzed the broadcast levels of CKLX-FM's spoken word programming and notes that the licensee is in compliance with its obligations in that regard.
53. However, following its examination of the list of musical selections provided by the licensee and of the additional information filed afterwards, the Commission confirms that the musical selections identified by the licensee as content category 3 selections, but that appeared on the popular music charts published by music trade publications, must be identified as content category 2 musical selections. Consequently, the Commission concludes that the licensee is in non-compliance with its condition of licence requiring it to devote at least 70% of its programming to musical selections drawn from content subcategory 34, and with section 2.2(5) of the Regulations, which relates to the broadcast of FVM selections.
54. In addition, the Commission notes that the licensee submitted the recordings and required documents following a second request by the Commission, dated 25 September 2012. However, the licensee neglected to respect certain criteria set out in the Regulations in regard to the initial submission of documents. The Commission therefore concludes that the licensee is in non-compliance with the following sections of the Regulations: sections 8(5) and 8(6), which relate to recordings of material broadcast, and section 9(3)(b), which relates to the obligation to submit to the Commission, upon request, the list of the musical selections broadcast by the licensee for a given period.
55. Finally, the above-noted instances of non-compliance are all related to programming, which is specifically targeted by RNC's proposed amendment. The Commission's standard practice is to deny applications to amend conditions of licence for which the objective is to remedy situations of non-compliance.

Conclusion

56. The Commission has previously approved applications for format changes similar to that presented by RNC, where economic need was demonstrated.⁴ It considers, however, that the present application differs from preceding cases. In fact, even though all of the applications approved were for the same type of amendment, the radio stations concerned were in compliance with the conditions of licence they were seeking to amend.
57. Further, the Commission notes that the markets in question were able to absorb the entry of a new commercial radio station operating under a non-specialty musical format. In addition, these applications were to change the music format rather than replace it with a specialty spoken word format. The licensees of these stations also committed to maintaining a certain level of musical selections from content subcategory 34 (Jazz and blues).
58. The Commission is of the view that the amendment proposed by RNC for CKLX-FM would be justified based on financial need. While approval of the application would not have an undue negative impact on existing commercial and community radio stations, the Commission considers that it could harm the chances of success for TTP Media's French-language spoken word AM radio station, which should begin operations by fall 2013.
59. In addition, the Commission finds that RNC is in non-compliance with sections 2.2(5), 8(5), 8(6) and 9(3)(b) of the Regulations, and with its condition of licence relating to the broadcast of programming drawn from content subcategory 34.
60. Further, as noted above, when questioned on its apparent non-compliance relating to its programming, the licensee indicated that it had respected its conditions of licence and obligations, and that the apparent instances of non-compliance were caused by the methodology used by the Commission. The licensee therefore did not provide valid reasons to explain the non-compliance, nor did it mention any measures that it would put into place to ensure future compliance.
61. In light of all of the above, the Commission **denies** the application by RNC MEDIA Inc. to amend the broadcasting licence for the French-language commercial radio programming undertaking CKLX-FM Montréal by converting the specialty format focused on Jazz and Blues to a specialty spoken word format.

Reminder

62. The Commission reminds RNC that, in accordance with its revised approach, it will examine the licensee's instances of non-compliance at the time of the renewal of the broadcasting licence for CKLX-FM, which expires 31 August 2013.

⁴ See Broadcasting Decisions 2011-739 (CJGV-FM Winnipeg), 2010-640 (CHMC-FM Edmonton) and 2007-427 (CIQX-FM Calgary).

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2012-370, 10 July 2012
- *CJGV-FM Winnipeg – Licence renewal*, Broadcasting Decision CRTC 2011-739, 30 November 2011
- *AM radio stations in Montréal*, Broadcasting Decision CRTC 2011-721, 21 November 2011
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010
- *CHMC-FM Edmonton – Licence renewal and amendment*, Broadcasting Decision CRTC 2010-640, 31 August 2010
- *CKLX-FM Montréal – Licence renewal and amendment*, Broadcasting Decision CRTC 2010-585, 17 August 2010
- *CIQX-FM Calgary – Licence amendment and renewal*, Broadcasting Decision CRTC 2007-427, 14 December 2007