



Broadcasting Decision CRTC 2016-409

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Reference: Part 1 application posted 21 April 2016

Ottawa, 14 October 2016

Radio Moyen Orient
Montréal, Quebec

Application 2016-0388-7

Complaint by 9015-2018 Québec inc. in regard to the programming commitments made by 9427899 Canada Inc. concerning CKIN-FM Montréal's programming

The Commission dismisses the complaint by 9015-2018 Québec inc. (Radio Moyen Orient) that 9427899 Canada Inc. (Neeti P. Ray) did not respect the programming commitments it made during its acquisition of the commercial ethnic radio station CKIN-FM Montréal.

The Commission finds that CKIN-FM did not violate its conditions of licence. Moreover, the Commission considers that the integrity of the licence transfer process was maintained during the ownership transaction in 2015.

The Commission notes that CKIN-FM's programming will be examined as part of the station's next licence renewal, which must take place over the next year, during a public process.

The parties

1. 9427899 Canada Inc. (Neeti P. Ray) is the licensee of the ethnic radio station CKIN-FM Montréal, Quebec.
2. 9015-2018 Québec inc. (Radio Moyen Orient) is the licensee of the ethnic AM radio station CHOU Montréal.

Background

3. In Broadcasting Decision 2007-217, the Commission approved an application by Canadian Hellenic Cable Radio Ltd. (Hellenic Radio) for a broadcasting licence to operate a new ethnic specialty commercial radio station to serve Montréal, Quebec, which would become CKIN-FM Montréal. In its application, Hellenic Radio indicated that the station would target various ethnic communities. The licence was renewed until 31 August 2017 in Broadcasting Decision 2013-691.

4. In Broadcasting Decision 2015-397, the Commission approved an application by Neeti P. Ray, on behalf of a corporation to be incorporated, to acquire the assets of CKIN-FM from Groupe CHCR Inc.¹ and for a broadcasting licence to continue the operation of the undertaking under the same terms and conditions as those in effect. Neeti P. Ray also indicated that it would continue to serve the various communities targeted by CKIN-FM, in particular, the South Asian communities.

Previous complaints

5. From 13 to 26 November 2015, the Commission received four complaints, from CHOU Montréal, CJWI Montréal, CJRS Montréal and Médias Maghreb, alleging that CKIN-FM's programming, which prior to the change in ownership was supposed to be multilingual and multicultural with an emphasis on South Asian communities, had changed following the transaction. They expressed the view that the programming was now strongly focused on Montréal's Arabic-speaking community and that the station was therefore in non-compliance with its conditions of licence and with the requirement to serve several cultural groups as set out in the *Ethnic Broadcasting Policy*² (the Policy).
6. At that time, Neeti P. Ray denied the allegations of non-compliance. It indicated that the station was broadcasting programming in at least eight languages and was targeting at least six ethnocultural communities, as required by the station's conditions of licence. It admitted, however, that a one-time error occurred during the week of 1 November 2015, when the station was making adjustments to its programming.
7. While Neeti P. Ray admitted to the increase in the quantity of Arabic-language programming being broadcast, it submitted that this increase was completely justified given the size and steady growth of Montréal's Arab community. According to the licensee, the decision to increase this type of programming helped stabilize the station's financial footing, while serving a market for which the diversity of voices left something to be desired in regard to the offer of Arabic-language programming.
8. Finally, Neeti P. Ray stated that nearly all of the programming broadcast by the station was local in nature and suitable for the Montréal market, including news, weather, sports results and various information on local community events.
9. After examining the information filed by the parties involved, Commission staff sent a letter to the complainants and to the licensee. In that letter, it noted that the decision set out in Broadcasting Decision 2015-397, which indicated that CKIN-FM had the flexibility necessary to provide programming to the communities and in the languages of its choice as long as it respected its conditions of licence, related the spirit of the

¹ Canadian Hellenic Cable Radio Ltd. changed its name to Groupe CHCR Inc. in 2014.

² See Public Notice 1999-117.

Policy and indicated that it would not be appropriate to limit CKIN-FM's ethnic programming orientation to certain communities.

10. The letter concluded by indicated that no additional actions on the part of the Commission were needed in regard to CKIN-FM and that the station's compliance would be examined during its next licence renewal in 2017.

Current complaint

11. On 14 April 2016, Radio Moyen Orient filed a new complaint, this time under Part 1 of the *CRTC Rules of Practice and Procedure*.³ Radio Moyen Orient stated that the broadcast of programming primarily focusing on Montréal's Arabic-speaking community so soon after the ownership transfer in 2015 places CKIN-FM in a situation of non-compliance in regard to its programming commitments. It requested that the Commission intervene to address this situation and direct CKIN-FM to limit Arabic-language programming to 8% of the broadcast week, as proposed in its original application for a broadcasting licence.⁴
12. In its complaint, Radio Moyen Orient explained that it had monitored CKIN-FM's programming for the week of 1 to 7 November 2015. It submitted that this monitoring permitted the following observations:
 - the ethnic and linguistic diversity of CKIN-FM's programming had declined significantly, and the station had become primarily Arabic, with 68% of its programming devoted to that community, whereas in the original application for a broadcasting licence, Hellenic Radio, the station's previous owner, committed to broadcasting only 8% of such programming;
 - no more than four ethnocultural groups were represented, in six distinct languages, in non-compliance with CKIN-FM's licence condition 5, which requires that the station serve six groups in eight distinct languages;
 - programming was no longer balanced as it relates to broadcasting in several languages and serving several communities, running counter to the commitments made during the ownership change in 2015; and
 - the programming in fact resembled that of CINA-FM Windsor, Ontario, which is held by a wholly owned corporation, like CKIN-FM, by Mr. Ray.⁵
13. In Radio Moyen Orient's view, these programming changes should have been included in the acquisition of assets application to allow public discussion during the process leading to the issuance of Broadcasting Decision 2015-397. It added that it

³ *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (SOR/2010-277).

⁴ See Broadcasting Decision 2007-217.

⁵ 2345771 Ontario Inc. is the licensee of CINA-FM Windsor and is wholly owned by The Neeti P. Ray Family Trust, of which Neeti P. Ray is the only trustee.

had abstained from filing an intervention in opposition since Neeti P. Ray had indicated its desire to continue operating the station under the current conditions of licence. Radio Moyen Orient considered that CKIN-FM undermined the integrity of the Commission's public process and of the equity rules that apply to all potential interveners, given that the information made available on the public record was, in its view, incomplete.

14. Radio Moyen Orient noted that it has served Montréal's Arabic-speaking citizens for nearly 20 years with its AM radio station CHOU, and expressed the view that CKIN-FM's transformation cannot be justified by invoking a market need. Further, since CHOU is operated in Montréal on an AM frequency, Radio Moyen Orient argued that, given the propagation and audio quality characteristics of the FM band when compared to the AM band, CKIN-FM has an unfair competitive advantage over CHOU.
15. The Commission did not receive any interventions regarding Radio Moyen Orient's complaint, but received an answer from Neeti P. Ray. The public record for this application can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.
16. Neeti P. Ray indicated that the complaint filed by Radio Moyen Orient is essentially the same as that filed in November 2015. The licensee submitted the same answer that it did in December 2015 for the previous complaints, with the addition of the following elements.
17. First, Neeti P. Ray disagreed with the allegations that the public proceeding procedures that resulted in the change of ownership were unfair and argued that the proceeding followed the Commission's regulatory practices and frameworks.
18. Second, it described the Montréal radio market as significant and diversified, and emphasized that the Arab community is one of that market's largest communities. It further argued that Radio Moyen Orient is trying to monopolize that market, which would not be in the public interest and would run counter to the objective of offering diverse programming for that large community.
19. Finally, it noted that Radio Moyen Orient's 20 years of experience serving the Arab community, combined with the recent approval by the Commission to add a low-power FM rebroadcasting transmitter in the Saint-Léonard borough,⁶ should be sufficient to ensure that the station will remain competitive in the market, in spite of CKIN-FM's programming changes.

⁶ See Broadcasting Decision 2016-72.

Commission's analysis and decisions

20. After examining the complaint in light of applicable regulations, along with the licensee's answer, the Commission, in making its decision, must determine:
- whether CKIN-FM is in non-compliance with its conditions of licence; and
 - whether the changes made to CKIN-FM's programming undermine the integrity of the Commission's licence transfer process.

CKIN-FM's compliance in regard to its conditions of licence

21. In the Policy, the Commission indicated that given the scarcity of spectrum and the limited resources of certain ethnocultural groups, the obligation to serve various ethnocultural groups remains an important element of the ethnic broadcasting framework. It considered, however, that a balance could be achieved between the two priorities of serving as many groups as possible and of offering quality programming to the groups served.
22. As such, when it sets out conditions of licence for a commercial ethnic radio station, the Commission specifies the minimum number of cultural groups to be served and the number of distinct languages in which to serve them. Further, for licences granted as part of a competitive process, the Commission sometimes imposes a condition of licence relating to the minimum level of service required in the proposed predominant third language.
23. The Commission did not impose on Hellenic Radio, or on Neeti P. Ray during the transfer of ownership, a condition of licence requiring CKIN-FM to broadcast a minimum amount of programming in a given third language. The condition of licence in effect stipulates only that during the broadcast week, the station must broadcast programming targeting a minimum of six different cultural groups in a minimum of eight distinct languages, which provides it with the flexibility necessary to offer programming to groups and in the languages of its choice.
24. In its complaint, Radio Moyen Orient noted that its monitoring of CKIN-FM's programming carried out from 1 to 7 November 2015 showed that the programming broadcast during this period targeted only four distinct groups in six distinct languages. However, based on CKIN-FM's program schedule, as posted on its website, the number of hours of third-language programming complies with the station's conditions of licence, and in particular condition of licence 5. As such, the station has chosen to offer programming to groups and in languages of its choice.
25. In light of the above, the Commission maintains the position set out in the Commission staff letter following the four previous complaints, specifically, that except for the variance admitted to by the licensee during the programming switch, the licensee is operating its station in compliance with its conditions of licence, and this in spite of the change in groups and languages targeted by its ethnic programming.

26. In regards to Radio Moyen Orient's proposal to impose a condition of licence limiting Arab-language programming to 8% of the broadcast week, section 9(1)(c) of the *Broadcasting Act* (the Act) does not allow the Commission to amend on its own initiative a licensee's conditions of licence before the fifth year of a given licence term. As such, it cannot impose a condition of licence on CKIN-FM at this time.

Integrity of the licence transfer process

27. In its 2015 application to purchase CKIN-FM and for a licence to continue the operation of the station, Neeti P. Ray indicated that it was aware of the conditions of licence governing the station's operations and that there was no foreseeable reason to amend them. It therefore requested that its new licence be subject to the terms and conditions current at the time of the application, including the requirement to broadcast, during the broadcast week, programming targeting at least six different cultural groups in at least eight distinct languages, without indicating however the proportion of programming that would be devoted to a given community.
28. Neeti P. Ray proposed to pay tangible benefits to ensure respect of the public interest in the non-competitive process and, in regard to the production of programming material, indicated its desire to produce more programming on a local scale, in particular for communities of South Asian origin.
29. In Broadcasting Regulatory Policy 2014-459, the Commission set out its view on how to ensure the public interest during ownership transactions in the absence of a competitive process. From the outset, it specified that since it does not solicit competing applications for changes to the ownership or effective control of broadcasting undertakings, the burden is on the applicant to show that the application is the best possible proposal and that approval is in the public interest, consistent with the overall objectives of the Act. As one way of ensuring that the public interest is served, the Commission expects applicants to propose a financial contribution (known as "tangible benefits") that are proportionate to the size and nature of the transaction and that will yield measurable improvements to the communities served by the broadcasting undertaking to be acquired, as well as the Canadian broadcasting system as a whole.
30. The Commission considers that it treated the application for change of ownership in accordance with established procedures, the regulatory framework for ethnic stations, the framework governing the imposition of tangible benefit payment and the station's specific conditions of licence, which do not identify any particular ethnocultural groups to serve. Moreover, by indicating that it would not be appropriate to limit the station's ethnic programming orientation to certain communities, the Commission has, within the transfer of ownership framework, responded to the concern that CKIN-FM should be forced to limit its programming to specific communities.

31. The Commission therefore finds that since the programming offered falls within the limits permitted by the conditions of licence, and given that Neeti P. Ray has proposed to pay tangible benefits, the integrity of the licence transfer process has not been undermined.

Conclusion

32. In light of all of the above, the Commission **dismisses** the complaint by 9015-2018 Québec inc. that 9427899 Canada Inc. did not respect the programming commitments it made during its acquisition of the commercial ethnic radio station CKIN-FM Montréal.

33. The Commission reminds Neeti P. Ray that the programming of CKIN-FM as well as its compliance with the station's conditions of licence will be examined during its next licence renewal in 2017. All information filed during the present proceeding will be added to the public record for that licence renewal.

Secretary General

Related documents

- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2016-212, 1 June 2016
- *CHOU Montréal – New low-power FM transmitter in Saint-Léonard*, Broadcasting Decision CRTC 2016-72, 25 February 2016
- *CKIN-FM Montréal – Acquisition of assets*, Broadcasting Decision CRTC 2015-397, 25 August 2015
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *CKDG-FM and CKIN-FM Montréal – Licence renewals*, Broadcasting Decision CRTC 2013-691, 13 December 2013
- *Licensing of new radio stations in Montréal and Vaudreuil-Dorion, Quebec*, Broadcasting Decision CRTC 2007-217, 6 July 2007
- *Ethnic Broadcasting Policy*, Public Notice CRTC 1999-117, 16 July 1999

This decision is to be appended to the licence.