



Broadcasting Decision CRTC 2005-530

Ottawa, 26 October 2005

CanWest MediaWorks Inc.
Montréal, Quebec

*Application 2004-0771-9
Broadcasting Public Notice CRTC 2005-25
22 March 2005*

CJNT-TV Montréal – Licence amendments

*In this decision, the Commission **denies** the proposal by CanWest MediaWorks Inc. (CanWest)¹ to amend a condition of licence for CJNT-TV Montréal to reduce from 75% to 50% the minimum percentage of ethnic programming that must be broadcast between 8 p.m. and 10 p.m. The Commission further **denies** the licensee's proposal to delete a condition of licence that requires CJNT-TV to devote specific percentages of non-ethnic programming to English- and French-language programming.*

*The Commission, however, **approves** CanWest's proposal to amend conditions of CJNT-TV's licence to delete annual requirements to serve a minimum number of ethnic groups in a minimum number of languages, while maintaining similar requirements that must be met monthly.*

A dissenting opinion by Commissioner Langford is attached.

Background

1. In *Acquisition of the assets of CJNT-TV*, Decision CRTC 2000-744, 29 November 2000 (Decision 2000-744), the Commission approved an application by a subsidiary of Global Communications Limited to acquire the assets of CJNT-TV that had been held by Raymond Chabot inc., trustee of CTEQ Télévision inc., in bankruptcy. As a result of an amalgamation that included Global Communications Limited, the licensee of CJNT-TV is now CanWest MediaWorks Inc. (CanWest).¹

¹ This application was filed by Global Communications Limited. However, Global Communications Limited, Global Television Network Inc., CanWest Media Inc. and some other CanWest subsidiaries amalgamated on 1 September 2005, to continue as CanWest MediaWorks Inc. As a result, CanWest MediaWorks Inc. is now the licensee of CJNT-TV and the applicant in this proceeding.

2. Decision 2000-744 set out the following conditions of licence for CJNT-TV related to the provision of ethnic and non-ethnic programming:
 1. CJNT-TV shall devote to the broadcasting of ethnic programs:
 - a) not less than 50% of the total number of hours broadcast monthly between 6 p.m. and midnight; and
 - b) not less than 75% of the total number of hours broadcast annually between 8 p.m. and 10 p.m.
 3. CJNT-TV shall devote to the broadcasting of non-ethnic programs:
 - a) not more than 40% of the total number of hours broadcast annually between 6 a.m. and midnight; and
 - b) not more than 50% of the total number of hours broadcast annually between 6 p.m. and midnight.
 4. In periods where the licensee chooses to broadcast non-ethnic programming:
 - a) no less than 35% and no more than 60% of the total number of hours dedicated annually to non-ethnic programming shall be devoted to English-language non-ethnic programming.
 - b) no less than 35% and no more than 60% of the total number of hours dedicated annually to non-ethnic programming shall be devoted to French-language non-ethnic programming.
 5. CJNT-TV shall broadcast ethnic programs directed toward not less than 18 distinct ethnic groups monthly, and toward not less than 25 distinct ethnic groups annually.
 6. CJNT-TV shall broadcast ethnic programs in not less than 15 different languages monthly, and not less than 25 different languages annually.

The application

3. CanWest proposed three amendments to the conditions of licence for CJNT-TV that are related to the broadcasting of ethnic and non-ethnic programming.

4. First, the licensee proposed to replace condition of licence 1b), set out above, with the following:

CJNT-TV shall devote to the broadcasting of ethnic programs ... b) not less than 50% of the total number of hours broadcast annually between 8 p.m. and 10 p.m.

5. The effect of this amendment would be to reduce from 75% to 50% the minimum percentage of hours between 8 p.m. and 10 p.m. that must be devoted to ethnic programming. CanWest submitted that approval of this proposed amendment would improve the station's overall financial performance by increasing its evening opportunities for simulcasting, which would, in turn, increase the revenues available to cross-subsidize ethnic programming.
6. Second, the licensee proposed to delete condition of licence 4, set out above, which sets out percentages of non-ethnic programming that must be devoted to English-language and French-language programming. Approval of the proposed amendment would permit CJNT-TV to devote all of its non-ethnic programming to programming in English. In support of this proposed amendment, the licensee submitted that CJNT-TV has been unable to successfully compete with established local French-language television stations for high-quality non-ethnic programming. As a consequence, it stated that CJNT-TV has not generated sufficient revenues from such programming to maximize revenues to cross-subsidize its ethnic programming.
7. Third, the licensee proposed to amend conditions of licence 5 and 6, set out above, to eliminate annual requirements to broadcast ethnic programs directed toward not less than 25 distinct ethnic groups and to broadcast ethnic programs in not less than 25 different languages. However, the monthly requirements in those conditions of licence to broadcast ethnic programs directed toward not less than 18 distinct ethnic groups and to broadcast ethnic programs in not less than 15 languages would be retained. The licensee was of view that adherence to the monthly requirements would be sufficient to ensure that the various ethnic groups in Montréal continue to be well served by CJNT-TV's schedule.
8. The licensee submitted that, at the time of the acquisition of CJNT-TV, it had projected a positive operating income beginning in 2002. However, over the three full years of operation by CanWest, CJNT-TV's operating expenses have significantly exceeded revenue. In order to compensate for low local revenues and higher than expected programming and production costs, the licensee stated that it had cut technical, sales and administrative expenses. It argued that, even if all three of the proposed amendments were approved, no reduction of the total amount of ethnic programming broadcast on CJNT-TV would result.

Interventions

9. The Commission received interventions in support of CanWest's proposal, including one submitted by Rogers Media Inc., whose broadcast holdings include Toronto ethnic television stations OMNI.1 and OMNI.2.
10. Interventions in opposition to CanWest's requests were submitted by CHUM Limited (CHUM), licensee of a number of television stations across Canada, CTV Television Inc. (CTV), licensee of CFCF-TV Montréal, among others across Canada, and Friends of Canadian Broadcasting (FCB). The concerns expressed by the opposing interveners are set out below.

CHUM

11. CHUM considered that approval of CanWest's proposed amendments would result in a significant change to the nature of CJNT-TV's service, and that CJNT-TV's current financial situation is consistent with CanWest's projections when it acquired the station in 2000.
12. CHUM further submitted that approval of CanWest's proposed amendments would strengthen the licensee's ability to acquire more expensive programming, to the financial detriment of various CHUM television stations. CHUM also stated that the impact of approval could result in market conditions unfavourable to CHUM's long-range goal of expansion into the Montréal television market.

CTV

13. CTV submitted that the licensee's first two proposed amendments, which would permit CJNT-TV to reduce the amount of ethnic programming broadcast between 8 p.m. and 10 p.m. and eliminate requirements to ensure that specific amounts of non-ethnic programming are provided in English and in French, should be denied. CTV considered that approval of those proposals would give CanWest an undue competitive advantage by permitting it to have duplicate coverage with separate English-language non-ethnic schedules on its two stations in the Montréal market at the expense of the CTV station CFCF-TV. It further considered that approval of these two proposed amendments would allow CanWest to simulcast significantly more non-Canadian programming since there is currently no Canadian content requirement for the non-ethnic English-language programming broadcast by CJNT-TV. CTV was also of the view that approval of the proposals would permit CanWest to convert CJNT-TV from an ethnic station serving a bilingual market to a station with much of its program schedule composed of programming from CanWest's Hamilton station CHCH-TV.

14. CTV further submitted that, since CJNT-TV is the only ethnic conventional television station licensed to serve the bilingual market of Montréal, it would not be appropriate to allow the elimination of its non-ethnic French-language programming. It also argued that approval of CanWest's proposals could set a precedent, allowing other ethnic conventional television stations serving other markets to propose similar amendments. As a result, in CTV's opinion, there could be a significant negative impact on other television stations and their audiences in those markets.
15. Finally, CTV expressed the view that it would be premature to alter the nature of CJNT-TV's service. It argued that CJNT-TV has already demonstrated some improvement under CanWest's ownership, and in any case, CanWest did not expect CJNT-TV to achieve profitability within the first four years of operation. CTV was of the view that the proposals should be more properly considered at the time of CJNT-TV's licence renewal, in 2007.

FCB

16. FCB opposed CanWest's application on the grounds that the licensee had presented no credible argument for relaxation of the existing conditions of CJNT-TV's licence. The intervener argued that, while the benefits of the proposals to the licensee are clear, the benefits to CJNT-TV's audience are not. FCB expressed the view that licensees should be required to adhere to their stated business plans. FCB submitted that the current conditions of licence are reasonable and are entirely in keeping with the licensee's original application to acquire CJNT-TV.

Licensee's reply

17. In its reply to the opposing interventions, the licensee submitted that it had not requested a change to CJNT-TV's mandate to provide ethnic programming, nor had it requested an exception to the policies set out in *Ethnic Broadcasting Policy*, Public Notice CRTC 1999-117, 16 July 1999. It argued that its proposed amendments are very limited in nature, and that CJNT-TV would continue to be an ethnic station serving Montréal's local ethnic communities. CanWest also stated that its advisory board and members of Montréal's ethnic communities have enthusiastically supported the application.
18. The licensee further indicated that it would continue to broadcast ethnic programming in the French language. It submitted that its proposal would affect only non-ethnic French-language programming because CanWest is not able to compete effectively for the rights to such programming.

Commission's analysis and determinations

19. Under CanWest's first proposed amendment, it would be permitted to reduce, from 75% to 50%, the amount of ethnic programming broadcast annually on CJNT-TV between 8 p.m. and 10 p.m. The Commission notes that, under its current condition of licence 1b), an average of 10.5 hours of ethnic programming must be broadcast weekly

between 8 p.m. and 10 p.m. Under CanWest's proposal, that amount would be reduced by 3.5 hours, to 7 hours per week. CJNT-TV would, however, still be required to devote not less than 50% of the total number of hours broadcast monthly between 6 p.m. and midnight to ethnic programming, as provided by condition of licence 1a).

20. The imposition of requirements to broadcast predominantly ethnic programming during the 8 p.m. to 10 p.m. time period for CJNT-TV and other licensed ethnic television services reflects the Commission's view that ethnic television stations should provide predominantly ethnic programming during peak hours, to properly reflect ethnic viewers and their communities. The Commission notes that CJNT-TV's requirement to broadcast ethnic programs for not less than 75% of the total number of hours annually between 8 p.m. and 10 p.m. is identical to that of Rogers' Toronto station OMNI.1, and less than the requirements for Rogers' OMNI.2 Toronto (80%) as well as that of CHNM-TV Vancouver (100%). The Commission is not persuaded that CanWest's request to reduce the level of ethnic programming broadcast on CJNT-TV between 8 p.m. and 10 p.m. is appropriate given its mandate to serve the ethnic communities of Montréal and is of the view that denial of this request would serve to maintain the station's distinctive program focus during the 8 p.m. to 10 p.m. period.
21. Approval of CanWest's second proposed amendment would result in CJNT-TV being allowed to devote 100% of its non-ethnic programming to English-language broadcasts. Decision 2000-744 approving CanWest's acquisition of CJNT-TV addressed the broadcast of French-language non-ethnic programming on CJNT-TV, noting that the applicant had:

... proposed a number of programming enhancements. It will add a new window to showcase Quebec-based French-language, non-ethnic programming. Such programming will foster better understanding between Montréal's ethnic and French-speaking communities.
22. In Decision 2000-744, the Commission also noted CanWest's statements to the effect that CJNT-TV would not entirely reflect the reality of the Montréal market without the presence of French-language programming.
23. The Commission notes that no interventions opposed to this proposed amendment were received from any French-language advocacy groups. However, given the fact that the licensee's proposal constitutes a fundamental change to the nature of CJNT-TV's service, and the relatively short time since CanWest acquired the station, the Commission considers that this request would best be considered at the time of the renewal of CJNT-TV's broadcasting licence.

24. CanWest's third proposed amendment would eliminate requirements to broadcast programming directed toward not less than 25 distinct ethnic groups and to broadcast ethnic programs in not less than 25 different languages annually. The Commission notes that the language groups served by CJNT-TV are generally small and have a limited ability to economically support the station's programs. The Commission further notes that the annual group and language requirements were inherited by CanWest as part of its acquisition of CJNT-TV in 2000 and are unique in Canada.
25. The Commission is satisfied that CJNT-TV's service to a range of ethnic groups in a range of languages would continue to be ensured through the licensee's current monthly requirement to broadcast ethnic programs directed toward not less than 18 distinct ethnic groups in not less than 15 different languages, which would remain unchanged. The Commission also considers that approval of this proposal would allow CJNT-TV some additional programming flexibility.

Conclusion

26. In light of all the above, the Commission **denies** the proposal by CanWest MediaWorks Inc. to amend the broadcasting licence for CJNT-TV Montréal in order to replace condition of licence 1b). It further **denies** CanWest's proposal to amend the broadcasting licence for CJNT-TV Montréal by deleting condition of licence 4, which sets out percentages of all non-ethnic programming that must be devoted to English-language and French-language programming.
27. The Commission, however, **approves** CanWest's proposal to amend conditions of licence 5 and 6 to eliminate annual requirements to broadcast programming directed to not less than 25 distinct ethnic groups and to broadcast ethnic programs in not less than 25 different languages. The revised conditions of licence 5 and 6 are as follows:
 5. CJNT-TV shall broadcast ethnic programs directed toward not less than 18 distinct ethnic groups monthly.
 6. CJNT-TV shall broadcast ethnic programs in not less than 15 different languages monthly.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Dissenting opinion of Commissioner Stuart Langford

I disagree with the majority decision in this matter. In my view, it is unnecessarily rigid, seemingly indifferent to the realities of nurturing an important element of the Canadian cultural mosaic and risks putting the future viability of ethnic television broadcasting in jeopardy. I would have approved parts two and three of CJNT-TV's three-part application, dealing with non-ethnic French-language programming and the number of distinct ethnic groups served. With regard to the fundamental issue underlying part one of this application, the obligation on the part of Canada's ethnic television stations to broadcast high levels of ethnic programming during prime time, I would have initiated a process to examine the impact of current levels on the financial viability of the stations involved.

A work in progress

Canadian broadcasters and the Commission have struggled over the years to find a commercially viable method of meeting one element of the Parliamentary directive contained in paragraph 3(1)(d)(iii) of the *Broadcasting Act*. That is, to reflect the "multicultural and multiracial nature of Canadian society." Two well-intentioned and highly motivated broadcasters, one in Toronto, another (the predecessor to the current CanWest owned CJNT-TV) in Montreal, went bankrupt trying. Three of four existing stations in Canada are relative newcomers to the challenges of balancing programming mandates and financial requirements. They are losing considerable sums of money each year attempting to find a viable formula.

No one said it would be easy, but as a work in progress, trying to meet viewer expectations and balance their books is a tough job for Canada's ethnic television broadcasters. Historically, the Commission has attempted to help out by allowing broadcasters to schedule popular non-ethnic broadcasting for part of the day in the hope that ad sales during those shows would defray ethnic programming costs. Limits, as they were for CJNT-TV are set by condition of licence. Occasionally the formula works, most often it does not.

Help!

CJNT-TV has given the challenge its best shot. Its financial status is precarious. It has come to the Commission for help. The majority decision slams the door in its face. The conditions of licence CJNT-TV accepted when it bailed out its bankrupt predecessor are proving too financially onerous. To rectify the situation, this application makes three pragmatic proposals. In my view, they merit far more support than the meagre amount contained in the majority decision.

The facts

CJNT-TV continues to lose money. Restricted as it is by current conditions of licence, that unhappy fact seems highly unlikely to change. If the Commission had granted its three-part application, it would have enabled CJNT-TV to make some revisions to its business plan. It could have freed up some prime time programming slots to broadcast revenue-producing simulcast shows and used the money generated to underwrite ethnic programming costs.

The total amount of ethnic programming broadcast would have remained the same. The core mission of CJNT-TV, to be one of only four Canadian stations dedicated to reflecting Canada's "multicultural and multiracial nature," would have continued and perhaps been strengthened. How can that be a bad thing?

Nay-sayers and yea-sayers

Three parties opposed the application. CTV, Canada's most successful commercial broadcaster, with a prime time schedule stuffed with high-priced U.S. sitcoms and dramas, opposed this application because it feared competition from money-losing CJNT-TV. CHUM opposed as well, apparently viewing a financially viable CJNT-TV as an obstacle to its own expansion plans in Montréal. The Friends of Canadian Broadcasting was of the view that conditions of licence, at least during a first licence term, are set in concrete – immutable, unmoveable, unchangeable, despite the fact that in this case they have been ineffective in attaining the larger goal, financially viable ethnic television broadcasting.

Of particular importance, in my view, is the answer to this question: "Who did *not* oppose CJNT-TV's requests?" With regard to request two (to drop money-losing, French-language, non-ethnic programs) paragraph 23 of the majority decision says it all: "no interventions opposed to this proposed amendment were received from any French-language advocacy group." With regard to request one, to move some ethnic programming out of prime time, I again quote from the majority decision, this time from paragraph 17: "CanWest also stated that its advisory board and members of Montréal's ethnic communities have enthusiastically supported the application."

Conclusion

It is easy to be doctrinaire, to rigidly resist change for any number of reasons and to find support for your resistance in precedent. It is more difficult, but generally far more satisfactory to resolve problems pragmatically. Put simply, if something is not working, find out why and with the minimum damage to fundamental objectives, change it. And, keep changing it until it does work.

Three commercial television broadcasters, one with a station in Quebec (CJNT-TV), one with two stations in Ontario (OMNI.1 and OMNI.2) and one with a station in British Columbia (CHNW-TV), continue to struggle to make Parliament's legislated directive regarding ethnic broadcasting in Canada a reality. Three of the four stations are losing money. How long should private investors be expected to foot the bill for something like this that is so clearly in the public interest?

In my opinion, we owe these broadcasters significant and measurable support. We should be open to reasonable applications to fine tune station output in an effort to find a winning formula – one that meets the needs of Canada's ethnic communities as well as commercial broadcasters' legitimate financial expectations.

CJNT-TV is not a public broadcaster, publicly funded. It has taken on huge responsibilities in the public interest and, along with those responsibilities, a daunting financial challenge. Where the Commission can assist it without jeopardizing first principles, it should do so. In my opinion, the majority decision falls far short of that responsibility.

The Commission could have risen to the challenge in the short term by granting requests two and three of this application and by immediately commencing a process to re-examine the core issue underlying the problems faced by ethnic television stations. We need to find a viable way to meet Parliament's legislated directive on multiracial and multicultural broadcasting while ensuring that those on the front lines are afforded a reasonable opportunity to profit from their enterprises.