



Broadcasting Decision CRTC 2012-670

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Ottawa, 7 December 2012

L.A. Radio Group Inc.
Lacombe, Alberta

Application 2012-0100-6

CJUV-FM Lacombe – Licence amendment

*The Commission **denies** an application to amend the broadcasting licence for the English-language commercial radio station CJUV-FM Lacombe in order to lower the level of Canadian musical selections it must broadcast in a broadcast week.*

The application

1. The Commission received an application by L.A. Radio Group Inc. (L.A. Radio) to amend the broadcasting licence for the English-language commercial radio programming undertaking CJUV-FM Lacombe in order to lower the level of content category 2 (Popular Music) selections it must devote to Canadian musical selections each broadcast week and from 6 a.m. to 6 p.m. Monday to Friday from 40% to 35%.
2. Specifically, the applicant requested that its condition of licence relating to the broadcast of Canadian musical selections be deleted so as to allow it to abide instead to the regulatory requirement to that effect set out in the *Radio Regulations, 1986* (the Regulations).
3. In support of its application, L.A. Radio stated that the music played on its Classic Hits music station had become overplayed as a result of the limited size of the Canadian music library. It also justified its request by citing the competitive state of the market. Specifically, it noted that there are currently eight commercial radio stations serving the Central Alberta market, of which three are new radio stations that were granted licences in 2008. L.A. Radio also noted that its commitment to a level of 40% Canadian selections was proposed as part of a non-competitive process.

Intervention and applicant's reply

4. The Commission received an opposing intervention from Newcap Inc. (Newcap), which operates two stations in nearby Red Deer, CIZZ-FM and CKGY-FM. Newcap argued that the competitive environment from the initial licensing of CJUV-FM in 2006 to the present had not changed dramatically. Specifically, Newcap noted that one of the three new Red Deer radio stations licensed in 2008 was awarded to L.A. Radio itself, while a second licence was awarded for a Christian specialty music station. The intervener also noted that the licensee was aware of the Canadian music landscape when it proposed the

40% Canadian content level in its 2006 application and that the availability of Canadian hits from the 60's, 70's and 80's had neither increased nor decreased since that time. Newcap further submitted that the station had the option to broaden its format to include more current Canadian hits. Finally, Newcap noted that CJUV-FM was licensed to serve the community of Lacombe and submitted that a local station with a focus on local programming would always outperform a distant station.

5. In reply, L.A. Radio maintained that the competitive state of the radio market in Lacombe had increased dramatically since 2006, noting that all Red Deer radio stations market to the Central Alberta region, which includes Lacombe. The applicant also emphasized that the purpose of the proposal to decrease the level of Canadian content was to better serve its listeners with less repetition. In this respect, L.A. Radio argued that it could not add new Canadian music given the station's Classic Hits format.

Commission's analysis and decision

6. The Commission notes that it approved an application by the licensee for a new commercial station in Broadcasting Decision 2006-71 following a non-competitive process. As part of its application, L.A. Radio stated that it would accept a condition of licence requiring it to devote at least 40% of all category 2 musical selections broadcast over the broadcast week and from 6 a.m. to 6 p.m. Monday to Friday to Canadian selections.
7. The Commission notes that the level of Canadian content is an equally important element in its assessment of applications for new commercial radio services whether they are treated as part of a competitive or non-competitive licensing process. In this case, the licensee's commitment to exceed the regulatory minimum for Canadian content was an important factor in the awarding of the licence for CJUV-FM. The Commission further notes that L.A. Radio also proposed a level of 40% Canadian content for its newly licensed Contemporary Hit radio station CKIK-FM Red Deer, approved in Broadcasting Decision 2008-287.
8. With respect to the licensee's submission that the Classic Hits format presents particular challenges to its ability to access sufficient Canadian musical selections, the Commission notes that this format falls within the broad category of Popular Music or content category 2. As such, L.A. Radio is free to broaden its existing music offering or transition to a different format. In addition, while the Commission has allowed stations to reduce the levels of popular Canadian music through regulation or by condition of licence where it has been demonstrated that such music may be limited, as in the case of instrumental, pre-1956 or pre-1981 music, the Classic Hits music format has not been identified by the Commission as a format for which Canadian popular music may be limited.
9. The Commission further notes that the licensee indicated in its application that the proposed amendment was not necessary for the financial viability of the station. In this respect, the Commission notes that while the licensee has argued that its 40% Canadian content level places it at a competitive disadvantage in Lacombe, the station's financial performance reflects a healthy profit before interest and taxes margin, while its tuning shows the station's consistent performance as one of the most popular stations in Lacombe.

10. In light of the preceding, the Commission considers that the licensee did not provide any evidence that its 40% Canadian content level places CJUV-FM at a competitive disadvantage in Lacombe, nor that there is a limited source of Canadian musical selections to warrant a reduction in its Canadian content level.
11. Accordingly, in light of all of the above, the Commission **denies** the application by L.A. Radio Group Inc. to amend the broadcasting licence for the English-language commercial radio programming undertaking CJUV-FM Lacombe in order to lower the level of content category 2 selections it must devote to Canadian musical selections each broadcast week and from 6 a.m. to 6 p.m. Monday to Friday from 40% to 35%.

Non-compliance

12. The Commission notes that the licensee appears to be in non-compliance with section 9(2) of the Regulations relating to the filing of annual returns for the 2008-2009 to 2010-2011 broadcast years. The Commission notes that the licensee filed its annual returns for these broadcast years after the 30 November deadline.
13. The Commission notes that the licensee also appears to have failed to comply with its condition of licence relating to Canadian talent development contributions for the same period, as well as for the 2005-2006 broadcast year, by failing to provide adequate proof of payment of its required contributions for those years. The total apparent shortfall amounts to \$15,833.33.
14. The Commission notes, however, that the licensee has not had the opportunity to comment on this apparent non-compliance in the context of this application.
15. 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 would be evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The Commission further indicated that it would also consider the circumstances leading to the non-compliance, the arguments provided by the licensee and the measures taken to rectify the situation. In accordance with its revised approach, the Commission will examine the licensee's non-compliance at the licence renewal for the station.

Secretary General

Related documents

- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Licensing of new radio stations to serve Red Deer and technical change relating to CJUV-FM Lacombe*, Broadcasting Decision CRTC 2008-287, 17 October 2008
- *English-language FM radio station in Lacombe*, Broadcasting Decision CRTC 2006-71, 14 March 2006