



Broadcasting Decision CRTC 2009-515

Route reference: 2009-296

Additional references: 2009-36, 2009-36-4

Ottawa, 21 August 2009

Radio 710 AM Inc.
Niagara Falls, Ontario

*Application 2009-0031-7, received 9 January 2009
Public Hearing in the National Capital Region
21 July 2009*

CJRN Niagara Falls – Acquisition of assets (corporate reorganization)

*The Commission **approves** an application by Radio 710 AM Inc. for authority to acquire from CJRN 710 Inc. the assets of CJRN Niagara Falls and for a new broadcasting licence to continue the operation of the station under the same conditions as those in effect under the current licence. The new licence will expire 31 August 2011. This short licence term will enable the Commission to assess, at an earlier date, the licensee's compliance with its conditions of licence.*

The application

1. The Commission received an application by Radio 710 AM Inc. (Radio 710) for authority to acquire from CJRN 710 Inc. (the licensee) the assets of the tourist radio programming undertaking CJRN Niagara Falls. The applicant also requested 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. CJRN 710 Inc. is currently controlled by Northguard Capital Corp. (Northguard), a corporation controlled by Mr. Andrew Ferri.
3. Upon closing of the proposed transaction, Radio 710, a corporation wholly-owned and controlled by Niagara Media Group Inc., which in turn is controlled by Northguard, will be the new licensee of CJRN. Radio 710 indicated that the acquisition of assets is a corporate reorganization that will not affect the effective control of CJRN as it will continue to be exercised by Mr. Ferri.
4. In Broadcasting Notice of Consultation 2009-296, the Commission noted that CJRN Niagara Falls may have failed to comply with its conditions of licence relating to the broadcast of pre-recorded tourist information and commercial messages.

5. As part of this process, the Commission received and considered one intervention in opposition to the application from the Canadian Association of Ethnic Broadcasters (CAEB). The intervention can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
6. After examining the application in light of applicable regulations and policies and taking into account the intervention received, the Commission considers that the issue to be addressed in its determinations is whether the licensee is in non-compliance with its conditions of licence.

Non-compliance

7. As set out in Broadcasting Decision 2006-5, the licensee is required, by condition of licence, to broadcast only pre-recorded tourist information for the purpose of informing visitors to Niagara Falls and may not broadcast any commercial messages.
8. In its intervention, the CAEB contended that CJRN has been violating its conditions of licence by broadcasting, since July 2008, a live program primarily in the Punjabi language. Further, the CAEB stated that the licensee has been broadcasting commercial advertising that targets members of the Asian community residing in the Toronto census metropolitan area during the program in question.
9. In a letter dated 25 March 2009, the Commission asked Radio 710 to respond to the intervention and to provide logger tapes containing the programming broadcast by the station during the week of 1 to 7 March 2009.
10. In its response to the Commission, the licensee acknowledged that, until it received a copy of the intervention filed by the CAEB, it believed that the station was in compliance with its conditions of licence. The licensee stated that it obtained the Punjabi-language programming under the terms of a Brokered Program Agreement which stipulated that the brokered programming must be in compliance with the station's conditions of licence.
11. In the same letter, the licensee stated that, upon receipt of the CAEB letter, it reviewed the brokered programming and obtained a translation of the programming broadcast on 11 November 2008. The licensee indicated that, after reviewing the translation, it immediately suspended the broadcast of the brokered programming as the programming did not appear to comply with the requirements imposed on the programming provider. The licensee also admitted that it cannot confirm whether the brokered programming broadcast after 11 November 2008 was in compliance with the station's conditions of licence. Finally, the licensee stated that in order to ensure absolute compliance with its conditions of licence, CJRN is no longer broadcasting third-language programs.

Commission's analysis and determinations

12. The Commission analyzed the logger tapes for the week of 1 to 7 March 2009 and found that the brokered programming broadcast on CJRN was not consistent with the station's conditions of licence. Specifically, the information broadcast as part of the third-language brokered programming was not solely directed to visitors to Niagara Falls and cannot be defined as tourist information. Moreover, commercial messages were broadcast. Accordingly, the Commission finds CJRN to be in non-compliance with its conditions of licence relating to the broadcast of pre-recorded tourist information and commercial messages.
13. The Commission is satisfied that the licensee, in removing the brokered programming from its programming schedule, has taken appropriate measures to ensure that its station remains in compliance with its conditions of licence.
14. In its application, Radio 710 requested 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. The current licence expires 31 August 2012. Given that the station has been found to be in non-compliance during its current licence term and given that the proposed transaction is a corporate reorganization without change in effective control of CJRN, the Commission considers it appropriate to issue a new licence with a short licence term expiring 31 August 2011. This short licence term will enable the Commission to assess, at an earlier date, the licensee's compliance with its conditions of licence.
15. The Commission reminds the licensee that it is the licensee's ultimate responsibility to be aware of all of the programming it broadcasts and that it is the licensee's ongoing responsibility to ensure that it respects the conditions of its licence at all times.

Conclusion

16. In light of the above, the Commission **approves** the application by Radio 710 AM Inc. for authority to acquire from CJRN 710 Inc. the assets of the tourist radio programming undertaking CJRN Niagara Falls.
17. Upon surrender of the current licence issued to CJRN 710 Inc., the Commission will issue a new licence to Radio 710 AM Inc. The new licence will expire 31 August 2011 and will be subject to the terms and **conditions** set out in the appendix to this decision.

Secretary General

Related documents

- Broadcasting Notice of Consultation CRTC 2009-296, 21 May 2009

- *CJRN Niagara Falls - Licence renewal*, Broadcasting Decision CRTC 2006-5, 10 January 2006

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>.

Appendix to Broadcasting Decision CRTC 2009-515

Terms and conditions of licence

Terms

The licence will expire 31 August 2011.

Conditions of licence

1. The licensee shall use this station solely to broadcast pre-recorded tourist information for the purpose of informing visitors to Niagara Falls.
2. The licensee shall not broadcast any commercial messages.