



Broadcasting Decision CRTC 2014-174 and Broadcasting Orders CRTC 2014-175 and CRTC 2014-176

PDF version

Route reference: 2013-448-1

Additional reference: 2013-448

Ottawa, 11 April 2014

3553230 Canada inc.
Saint-Constant, Quebec

CJMS Saint-Constant – Issuance of broadcasting orders following recurring non-compliance

The Commission issues orders requiring 3553230 Canada inc. to ensure that CJMS Saint-Constant complies at all times with sections 8(1), 8(5), 8(6) and 9(4) of the Radio Regulations, 1986.

Background

1. In a letter dated 4 July 2013, the Commission informed 3553230 Canada inc. (3553230 Canada), licensee of the French-language commercial AM radio station CJMS Saint-Constant, Quebec, of its non-compliance with sections 8(1), 8(5), 8(6) and 9(4) of the *Radio Regulations, 1986* (the Regulations) regarding the filing of logger tapes and program logs, and the obligation to provide all information relevant to the Commission's request.
2. In Broadcasting Notice of Consultation 2013-448-1, the Commission indicated that since December 2012, it had unsuccessfully attempted on several occasions to obtain from 3553230 Canada the logger tapes and program logs for CJMS to analyze them in the context of the renewal of the station's licence, which expires 31 August 2014.
3. In the same notice, the Commission requested 3553230 Canada to appear at a public hearing scheduled for 5 and 6 November 2013, which the licensee did. During the hearing, the Commission addressed the following issues:
 - the reasons for which the licensee did not reply to the Commission's numerous requests;
 - the periods during which the station was not broadcasting (off the air);
 - the station's technical compliance, according to the Department of Industry; and

- the reasons for which the Commission should not issue an order requiring the licensee to comply with sections 8(1), 8(5), 8(6) and 9(4) of the Regulations, or even consider suspending or revoking its licence.
4. The Commission notes that this is the fourth consecutive licence term in which 3553230 Canada is in non-compliance with respect to CJMS.

Licensee reply

5. 3553230 Canada submitted that an order is not necessary given that it has since provided the missing material. It stated that it has made a significant financial investment in the station's infrastructure and highlighted that CJMS is the only radio station in Saint-Constant to offer a country music format. It added that it has entered into negotiations to sell the station. The Commission confirms that the missing documents were filed a few days before the hearing.
6. 3553230 Canada admitted to having received all of the correspondence from the Commission without having replied to it. It explained that its behaviour was in large part due to the illness of Mr. David Azoulay, the father of the owner of CJMS, who was the general manager of the station.
7. In regard to the period during which the station ceased broadcasting, the licensee claimed that it was off the air for a period of only 48 consecutive hours, specifically, from 10 to 12 October 2013. It attributed this off-air period to a Hydro-Québec power failure caused by a storm.
8. During the hearing, 3553230 Canada stated that the station is on the air and that it broadcasts 24 hours a day from 143 St-Pierre Street in Saint-Constant. It also stated that two full-time hosts are on site during the day (until 6 p.m.) to ensure that the programming is broadcast, and that the evening programming is supervised off-site. The rest of CJMS's programming is provided by external hosts and producers. With respect to the local programming, the licensee indicated that it broadcasts a three-hour program in the morning and a two-hour program around the lunch hour. 3553230 Canada stated that the station broadcasts live, 18 hours a day, five days a week, programming comprising news, weather and traffic information. The licensee also stated that it is in compliance with all of its other conditions of licence.
9. 3553230 Canada stated that CJMS is in compliance with its technical requirements. It specified that it is currently trying to increase the station's effective radiated power to 10,000 watts and that the towers and grounding system are already in place.
10. Following the licensee's reply, the Commission requested 3553230 Canada to file various documents: a medical opinion on the state of health of the owner's father, documents detailing investments in the station's infrastructure, and documents demonstrating interest from a potential buyer for the station. The Commission also requested the licensee to provide an email address, a street address and a telephone

number at which it can be reached from 9 a.m. to 5 p.m., as well as the specific dates on which CJMS did not broadcast any programming.

Commission's analysis

11. The Commission notes that CJMS's non-compliance is very serious overall and that the licensee seems to have very little respect for the organization that regulates it. Further, despite the fact that the licensee has met all of the requests made at the hearing, the Commission is of the view that the licensee was not very convincing in its arguments in explanation of the non-compliances. The station seems to suffer from a lack of management leadership, which very likely affects the quality of the radio service provided to the population of Saint-Constant.
12. However, CJMS, the only local station in Saint-Constant, offers a country music format, which is not currently offered by any other station in the area.
13. The Commission has obtained a letter of agreement between the owner of CJMS and a potential buyer, and considers that there is a strong possibility that the station will be bought and revitalized by another licensee. Should this possibility materialize, the population of Saint-Constant would continue to receive local radio service potentially improved and with a more solid foundation.
14. Finally, the Commission will have another opportunity to reconsider CJMS's situation given that it will soon have to examine the station's application for the renewal of its licence, which expires 31 August 2014.
15. In this regard, the Commission notes that since the hearing, it has received a complaint regarding CJMS's programming and management. The complaint and all related correspondence will be added to the public record, and the Commission will take it into account as part of the station's licence renewal.

Conclusion

16. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to dealing with non-compliance by radio stations. In particular, the Commission noted that each instance of non-compliance would be evaluated in light of such factors as the quantity, recurrence and seriousness of the non-compliance. The Commission also noted that it would consider the circumstances leading to the non-compliance in question, the licensee's arguments, as well as the measures taken to rectify the situation.
17. The Commission also notes that possible sanctions include the imposition of conditions of licence or mandatory orders, as well as suspension or revocation of the licence.

18. In light of all of the above and of the licensee's longstanding non-compliance, and to ensure its future compliance with its regulatory requirements, the Commission finds it appropriate to issue orders requiring 3553230 Canada inc. to comply with sections 8(1), 8(5), 8(6) and 9(4) of the *Radio Regulations, 1986*. The orders are set out in Appendices 1 and 2 to this decision.
19. Pursuant to section 13 of the *Broadcasting Act*, the orders will be filed with the Federal Court and will become orders of that court. Failure to comply with a Federal Court order may result in recourse to the compliance procedures of that court.
20. In addition, the Commission requires that 3553230 Canada submit, by no later than **12 May 2014**, an application to renew the licence for CJMS Saint-Constant, which expires on 31 August 2014.
21. The Commission also requires 3553230 Canada to submit, by no later than **10 July 2014**, an application to transfer ownership of CJMS Saint-Constant. Failure to do so could result in the Commission deciding not to renew the station's licence.

Reminder

22. 3553230 Canada must inform the Commission of all changes made to its contact information (i.e., email or street address, and telephone number).

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2013-448-1, 6 September 2013
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011

* *This decision is to be appended to the licence.*

Appendix 1 to Broadcasting Decision CRTC 2014-174

Broadcasting Order CRTC 2014-175

Pursuant to section 12(2) of the *Broadcasting Act*, the Commission hereby orders 3553230 Canada inc., licensee of CJMS Saint-Constant, to comply at all times during the term of the licence granted in *CJMS Saint-Constant – Licence renewal*, Broadcasting Decision CRTC 2010-631, 30 August 2010, with the requirements set out in sections 8(1), 8(5) and 8(6) of the *Radio Regulations, 1986*, which read as follows:

8(1) Except otherwise provided under a condition of its licence, the licensee shall:

- (a) keep, in a form acceptable to the Commission, a program log or a machine-readable record of the matter broadcast by the licensee;
- (b) retain the log or record for a period of one year after the date on which the matter was broadcast;
- (c) cause to be entered in the log or record, daily, the following information:
 - (i) the date,
 - (ii) the call letters, location and frequency of the licensee's station,
 - (iii) the time at which the station identification announcement is made,
 - (iv) in relation to each program broadcast:
 - (A) the title and a brief description,
 - (B) subject to subsection (2), the number of the relevant content category,
 - (C) the time at which the program begins and ends,
 - (D) the code set out in the schedule indicating the origin of the program and where applicable the language, type or group,
 - (E) if applicable, the code set out in the schedule identifying non-Canadian programming,
 - (v) in relation to each commercial message, the quarter hour during which it is broadcast, its duration and the number of the relevant content subcategory.

(5) The licensee shall retain a clear and intelligible tape recording or other exact copy of all matter broadcast

- (a) for four weeks from the date of the broadcast; or

(b) where the Commission receives a complaint from any person regarding the matter broadcast or for any other reason wishes to investigate it and so notifies the licensee before the expiration of the period referred to in paragraph (a), for eight weeks from the date of the broadcast.

(6) Where, before the expiry of the applicable period referred to in subsection (5), the Commission requests from the licensee a clear and intelligible tape recording or other exact copy of matter broadcast, the licensee shall furnish it to the Commission forthwith.

Appendix 2 to Broadcasting Decision CRTC 2014-174

Broadcasting Order CRTC 2014-176

Pursuant to section 12(2) of the *Broadcasting Act*, the Commission hereby orders 3553230 Canada inc., licensee of CJMS Saint-Constant, to comply at all times during the term of the licence granted in *CJMS Saint-Constant – Licence renewal*, Broadcasting Decision CRTC 2010-631, 30 August 2010, with the requirements set out in section 9(4) of the *Radio Regulations, 1986*, which reads as follows:

9(4) At the request of the Commission, the licensee shall respond to:

(a) any complaint or request for resolution of a dispute filed by any person or any request for information regarding programming originated or distributed by the licensee or regarding the licensee's technical operations, subscribership, financial affairs or ownership; and

(b) any request for information regarding the licensee's adherence to the conditions of its licence, the Act, these Regulations, industry standards, practices or codes or any other self-regulatory mechanism of the industry.