



Broadcasting Decision CRTC 2014-587 and Broadcasting Order CRTC 2014-588

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Route references: 2014-426 and 2014-426-1

Ottawa, 13 November 2014

Radio India (2003) Ltd.
Surrey, British Columbia

Reference 2014-0694-2

Radio India – Issuance of mandatory order

The Commission issues a mandatory order that, among other things, prohibits Radio India (2003) Ltd. from producing radio programming in Canada and transmitting it to Canadian audiences using the facilities of radio stations located in the United States.

Introduction

1. The Commission conducted a public process to consider licensing new radio stations in Surrey, British Columbia, which included an oral hearing that began on 27 January 2014. During this process, concerns were raised regarding whether certain entities were potentially broadcasting in whole or in part in Canada without a licence and transmitting their programming from Washington State into Lower Mainland British Columbia in contravention of the *Broadcasting Act* (the Act). The Commission subsequently sought to gather information regarding the entities in question.
2. In light of the information gathered, the Commission noted in Broadcasting Notice of Consultation 2014-426 that it appeared that Radio India (2003) Ltd. (Radio India) may be carrying on a broadcasting undertaking in whole or in part in Canada without a licence or pursuant to an exemption, contrary to the Act. The Commission called Radio India to a hearing, scheduled for 15 October 2014, in order to inquire into, hear and determine this issue and to allow Radio India an opportunity to show cause why a mandatory order should not be issued requiring Radio India to cease and desist.
3. In particular, the Commission noted that Radio India is owned and controlled by Baljit Kaur Bains, a Canadian citizen, carries on business in Canada, operates out of Surrey, British Columbia, and produces programming for broadcast on the radio as well as over the Internet but does not have a licence to carry on a radio programming undertaking. It also appeared that Radio India had an arrangement with Way Broadcasting Licensee, LLC, the licensee of KVRI 1600 AM, located in Blaine, Washington, to transmit its programming by radio waves for reception by the public by means of a radio and this transmission is received in Canada.

Commission's analysis and decisions

4. The Commission considers that there are two issues to be addressed in this decision:
 - whether Radio India is carrying on a broadcasting undertaking in whole or in part in Canada without a licence, contrary to the Act; and
 - whether the Commission should issue a mandatory order requiring the cessation of the broadcasting activities.

Non-compliance with the *Broadcasting Act*

5. In order to broadcast in whole or in part in Canada, a broadcasting undertaking must have a licence from the Commission or operate subject to an exemption. Section 32 of the Act makes it an offence for any person to carry on a broadcasting undertaking without a licence or without authority pursuant to a valid exemption.
6. The Commission considers that there are three key questions that must be answered in determining whether Radio India is carrying on a broadcasting undertaking in whole or in part in Canada without a licence contrary to the Act:
 - Is Radio India carrying on a broadcasting undertaking? If it is carrying on a broadcasting undertaking:
 - Is that undertaking being carried on in whole or in part in Canada?
 - Does Radio India have a licence or authority to operate that undertaking?

Is Radio India carrying on a broadcasting undertaking?

7. A broadcasting undertaking includes a programming undertaking, such as a radio station, which is defined in the Act as “an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus.”
8. More generally, “broadcasting” is defined as “any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus ...”
9. The Commission notes that a programming undertaking need not provide the transmission facilities itself. It is sufficient that the programming undertaking has made arrangements for its signal to reach the public directly or indirectly in order to be caught by the Act.

10. Radio India indicated that it creates programming at its studios in Surrey for broadcast over the air by subsidiary communications multiplex operations (SCMOs) and by KVRI 1600 AM, as well as for broadcast over the Internet.
11. The Commission notes that the programming being broadcast on KVRI 1600 AM is transmitted via the Internet and picked up from the public Internet feed at KVRI's studios in Blaine. Pursuant to a Time Brokerage Agreement with Way Broadcasting Operating, LLC, Radio India's programming is then transmitted by radio waves for reception by the public by means of a radio.
12. In light of the above, the Commission concludes that Radio India is carrying on a broadcasting undertaking.

Is that undertaking being carried on in whole or in part in Canada?

13. The Commission notes that, in order for a broadcasting undertaking to be caught by the Act, it is sufficient that only part of the undertaking's activities take place in Canada.
14. Based on responses provided by Radio India to the Commission's inquiries and as confirmed at the hearing, Radio India has strong ties to Canada. It is incorporated in British Columbia; its shareholder, Baljit Kaur Bains, and its managing director, Maninder Singh Gill, are Canadian citizens; its offices and studios are owned by Radio India and located in Surrey; and its programming is all produced at those studios.
15. Radio India has also indicated intent to conduct business in Canada as it solicits advertising in Canada and the bulk of its revenue comes from Canadian advertisers. Furthermore, the majority of Radio India's employees are Canadian citizens or permanent residents, it conducts its banking in Canada, and it pays taxes in Canada.
16. With respect to its operations, Radio India has been carrying on its programming undertaking in British Columbia since 1998 and has been broadcasting over the air on KVRI since 2000. Its current Time Brokerage Agreement with KVRI extends until 2017. Radio India admitted that its target audience is the Lower Mainland British Columbia and that its news, weather and traffic reports are local to Surrey and Greater Vancouver. Radio India also confirmed that the signal of KVRI reaches well into the Lower Mainland, including Surrey and Greater Vancouver.
17. In light of the above, despite the fact that the actual over-the-air transmission is from a tower located in the United States, the Commission considers that Radio India is carrying on its broadcasting undertaking in part in Canada.

Does Radio India have a licence or authority to operate that undertaking?

18. Radio India does not have a licence issued by the Commission to operate a broadcasting undertaking in Canada.

19. The *Exemption order for digital media broadcasting undertakings* set out in the Appendix to Broadcasting Order 2012-409 (Digital Media Exemption Order) exempts broadcasting delivered or accessed over the Internet from regulation. As a result, making Radio India's programming available on the Internet does not require a licence and does not contravene the Act provided that Radio India complies with the terms of the Digital Media Exemption Order. Similarly, any activities related to SCMOs within Canada would likely also be exempt provided that Radio India complies with the Commission's guidelines in that respect.¹
20. There is, however, no exemption that relates to broadcasting over the air via transmitters in the United States, and the nature of Radio India's broadcasts does not comply with any other current exemption. As a result, the Commission finds that Radio India's over-the-air broadcasting activities are not authorized pursuant to an exemption.

Conclusion

21. In light of all of the above and the admission by Radio India at the 15 October 2014 public hearing that it is not operating in compliance with the Act, the Commission finds Radio India to be carrying on a broadcasting undertaking in part in Canada without a licence or authority pursuant to an exemption.

Mandatory order

22. Section 12(2) of the Act provides that:

The Commission may, by order, require any person to do, forthwith or within or at any time and in any manner specified by the Commission, any act or thing that the person is or may be required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part and may, by order, forbid the doing or continuing of any act or thing that is contrary to this Part or to any such regulation, licence, decision or order.

23. Operating without a licence is one of the most serious offences under the Act. In light of this and the finding that Radio India is operating a broadcasting undertaking in part in Canada without a licence, the Commission considers it appropriate to impose a mandatory order pursuant to section 12(2) of the Act.
24. In doing so, the Commission considers that there are two key questions to be addressed:
- Who should be the subject of the mandatory order?
 - What should be the terms of the mandatory order?

¹ See Public Notice 1989-23.

Who should be the subject of the mandatory order?

25. The legal entity operating the broadcasting undertaking is Radio India (2003) Ltd. Accordingly, the Commission considers it appropriate to impose a mandatory order on Radio India (2003) Ltd.
26. The sole shareholder of the corporation is Baljit Kaur Bains, and the managing director is her brother, Maninder Singh Gill.
27. At the hearing, the Commission discussed at length with Mr. Gill what role he and Ms. Bains respectively played in the operations of the undertaking generally and in over-the-air broadcasting specifically. Mr. Gill informed the Commission that Ms. Bains was consulted on “major decisions” and that she was made aware of the overall direction and targets set for the station but that he was responsible for the majority of the day-to-day operational decision making as well as controlling the strategic direction of the company.
28. As the sole shareholder of Radio India, Ms. Bains ultimately has control over the company regardless of whether she has delegated authority for the day-to-day operations to someone else. If she had concerns with Mr. Gill’s decisions or the strategic direction in which he was taking the company, including operating the station in non-compliance with the Act, it was within her power to remove him from his position given that he is an employee. Ms. Bains did not do so but allowed the company to enter into arrangements, specifically the Time Brokerage Agreement with KVRI, to broadcast its programming in contravention of the Act. Although Mr. Gill signed this agreement, the Commission notes that Ms. Bains approved it.
29. With respect to Mr. Gill, he testified that he is responsible for making 95% of the decisions related to Radio India and that he controlled the strategic direction of the company. In particular, the record indicates that Mr. Gill was the directing mind behind the strategic decision to enter into the arrangement with KVRI to have Radio India’s programming broadcast into Canada using a transmitter in the United States, and that he signed the agreement.
30. In light of all of the above, the Commission considers that both Ms. Bains and Mr. Gill were integral to Radio India’s non-compliant activities. Accordingly, the Commission will also impose the mandatory order on Baljit Kaur Bains and Maninder Singh Gill.

What should be the terms of the mandatory order?

31. At the hearing Radio India requested 120 days grace to come into compliance, claiming that ceasing operations immediately would have a devastating financial impact on the company. To this end, Radio India cited the cost of cancelling the lease with KVRI, which has been prepaid until 31 March 2015, and outstanding accounts receivable. The 120-day grace period would permit an orderly transition in the cessation of the over-the-air broadcasting on KVRI and provide time to explore other distribution platforms that would comply with the Act. Radio India also drew

attention to the impact that an immediate cessation would have on its employees, advertisers and listeners and argued that a grace period would help it place affected employees and advise the audience and advertisers to switch to an online platform.

32. Radio India cited a 90-day notice of termination requirement for its Time Brokerage Agreement with KVRI. Upon closer examination, the Commission notes that the Time Brokerage Agreement does not in fact contain a termination clause. According to Radio India, the notice requirement is only a verbal understanding. Radio India also submitted a letter dated 15 October 2014 from In-Language Radio. The letter confirmed that the termination clause does not exist and indicated that Radio India had, it would seem recently, asked to have a 90-day termination clause added to the agreement. In light of all of this, the Commission is not convinced that Radio India could not terminate its arrangement with KVRI sooner.
33. In addition, the Commission is not convinced that Radio India would suffer the financial effects alleged by Mr. Gill, if required to cease broadcasting over the air sooner than 120 days. While Radio India may suffer certain financial consequences, the terms of the Time Brokerage Agreement and the financial information submitted on the record do not appear to support the allegation, particularly if Radio India is as profitable as Mr. Gill claims. In addition, the Commission notes that there are a number of alternative broadcasting models available to Radio India pursuant to a variety of exemptions that would enable it to continue to broadcast.
34. Accordingly, pursuant to section 12(2) of the Act, the Commission hereby **orders** Radio India (2003) Ltd., Baljit Kaur Bains and Maninder Singh Gill to not carry on a broadcasting undertaking at Surrey, British Columbia, or anywhere else in Canada, except in compliance with the Act. In particular, Radio India (2003) Ltd. must, by 11:59:59 p.m. Pacific Standard Time on **13 November 2014**, cease to have its programming broadcast over the air via a transmitter whose signal reaches into Canada, whether by arrangement or otherwise, without a licence or authority pursuant to an exemption.
35. In addition, the Commission **orders** Radio India (2003) Ltd. to file proof with the Commission that it has terminated its arrangements with Way Broadcasting Operating, LLC, licensee of KVRI 1600 AM by 5:00 p.m. Pacific Standard Time on **20 November 2014** including proof that it is no longer broadcasting and will not in the future broadcast its programming over the air from KVRI 1600 AM. Such proof might include a letter from Way Broadcasting Operating, LLC confirming that the arrangements have been terminated and that Way Broadcasting Operating, LLC is no longer broadcasting, and will not in the future broadcast on its radio station, the programming of Radio India or programming created or broadcast by Radio India, Baljit Kaur Bains or Maninder Singh Gill or any company or organization that Baljit Kaur Bains or Maninder Singh Gill own or with which they are affiliated.
36. Furthermore, the Commission **orders** Radio India (2003) Ltd, Baljit Kaur Bains and Maninder Singh Gill to not have an ownership interest or involvement of any nature in any element of a business connected with a radio station operating out of the

United States that has a transmitter whose signal reaches into Canada, to the extent that such arrangements may be in contravention of the Act.

37. A mandatory order to this effect is set out in the appendix to this decision.

Secretary General

Related documents

- *Notice of Hearing*, Broadcasting Notice of Consultation CRTC 2014-426, 13 August 2014, as amended by Broadcasting Notice of Consultation CRTC 2014-426-1, 2 October 2014
- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, Broadcasting Order CRTC 2012-409, 26 July 2012
- *Services Using the Vertical Blanking Interval (Television) or Subsidiary Communications Multiplex Operation (FM)*, Public Notice CRTC 1989-23, 23 March 1989

Appendix to Broadcasting Decision CRTC 2014-587
Broadcasting Mandatory Order CRTC 2014-588

1. Radio India (2003) Ltd., Baljit Kaur Bains and Maninder Singh Gill are hereby ordered, pursuant to section 12(2) of the *Broadcasting Act*, to not carry on a broadcasting undertaking at Surrey, British Columbia, or anywhere else in Canada, except in compliance with the *Broadcasting Act*.
2. Radio India (2003) Ltd. is hereby ordered, pursuant to section 12(2) of the *Broadcasting Act*, by 11:59:59 p.m. Pacific Standard Time on 13 November 2014, to cease having its programming broadcast over the air via a transmitter whose signal reaches into Canada, whether by arrangement or otherwise, without a licence or authority pursuant to an exemption. Radio India (2003) Ltd. is also ordered to provide to the Commission proof that it has terminated its arrangements with Way Broadcasting Operating, LLC, licensee of KVRI 1600 AM by 5:00 p.m. Pacific Standard Time on 20 November 2014 including proof that it is no longer broadcasting, and will not in the future broadcast, its programming over the air from KVRI 1600 AM.
3. Radio India (2003) Ltd., Baljit Kaur Bains and Maninder Singh Gill are hereby ordered, pursuant to section 12(2) of the *Broadcasting Act*, to not have an ownership interest or involvement of any nature in any element of a business connected with a radio station operating out of the United States that has a transmitter whose signal reaches into Canada, to the extent that such arrangements would be in contravention of the *Broadcasting Act*.