



Broadcasting Decision CRTC 2016-414 and Broadcasting Orders CRTC 2016-415, 2016-416, 2016-417 and 2016-418

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Reference: 2016-64-1

Ottawa, 20 October 2016

Surrey Myfm inc.
Surrey, British Columbia

*Reference number 2016-0120-4
Public hearing in Vancouver, British Columbia
16 May 2016*

Surrey Myfm inc. and Ravinder Singh Pannu – Issuance of mandatory orders

The Commission issues a mandatory order requiring Surrey Myfm inc. (Myfm) and Ravinder Singh Pannu not to carry on a broadcasting undertaking in Surrey, British Columbia, or anywhere else in Canada, except in compliance with the Broadcasting Act.

The Commission also issues a mandatory order requiring Myfm and Mr. Pannu, where either operates a broadcasting undertaking pursuant to an exemption, to comply at all times with the terms of that exemption.

In addition, the Commission issues a mandatory order requiring Myfm and Mr. Pannu to file reports with the Commission relating to the programming and operations of VF2689 as set out in the present decision and as may be requested by the Commission from time to time.

Lastly, the Commission issues a mandatory order requiring Myfm and Mr. Pannu to retain a clear and intelligible audio recording or exact copy of all matter broadcast on VF2689 for four weeks from the date of the broadcast as well as a detailed program schedule, which must be submitted to the Commission on its request.

Introduction

1. On 11 September 2015, the Commission received a complaint from South Asian Broadcasting Corporation Inc. (South Asian Broadcasting), licensee of the commercial ethnic radio station CKYE-FM Vancouver, British Columbia. South Asian Broadcasting alleged that Surrey Myfm inc. (Myfm) was operating VF2689 Surrey as an unauthorized commercial ethnic FM radio station rather than as an exempt tourist information radio station as it claimed.

2. Myfm is owned and controlled by Ravinder Singh Pannu. Myfm operates the station VF2689 in Surrey at 106.9 MHz. The station produces programming for broadcast on the radio, but does not hold a broadcasting licence to carry on a radio programming undertaking as Myfm and Mr. Pannu claim to operate it as an exempt low-power tourist information radio station pursuant to Broadcasting Order 2014-447 (the Exemption Order).
3. As a result of the complaint, the Commission sought information from Myfm regarding its operations and activities to determine if it was operating in accordance with the terms of the Exemption Order.
4. Based on the information received, in Broadcasting Notice of Consultation 2016-64-1 the Commission noted that Myfm appeared to be operating its tourist information station in non-compliance with the Exemption Order, and, in particular, that Myfm:
 - is broadcasting programming that is inconsistent with paragraphs 4, 6 and 7 of the Exemption Order;
 - is broadcasting above the station's technical parameters as authorized by the Department of Industry (the Department), contrary to paragraphs 1 and 2 of the Exemption Order; and
 - has not implemented emergency alerting as required under paragraph 10 of the Exemption Order.
5. The Commission also stated that Myfm therefore appeared to be carrying on a broadcasting undertaking in whole or in part in Canada without a broadcasting licence, contrary to the *Broadcasting Act* (the Act).
6. Consequently, the Commission called Myfm and Mr. Pannu to appear at the 16 May 2016 public hearing in Vancouver to inquire into, hear and determine whether they are carrying on an undertaking in whole or in part in Canada without a licence and to provide them with an opportunity to show cause why a mandatory order should not be issued requiring them to cease and desist from operating a broadcasting undertaking in Surrey or elsewhere in Canada, except in compliance with the Act.
7. The Commission received interventions in support of Myfm, as well as interventions in opposition from I.T. Productions Ltd., licensee of the commercial AM ethnic radio station CJRJ Vancouver, the British Columbia Association of Broadcasters and South Asian Broadcasting, to which Myfm replied. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca or by using the reference number provided above.

Commission's analysis and decisions

8. The key issue in this proceeding is whether Myfm and Mr. Pannu are carrying on an undertaking in whole or in part in Canada without a broadcasting licence. The Commission must therefore determine whether Myfm:

- broadcasts programming that is inconsistent with the Exemption Order;
- is operating according to the technical requirements set out in the Exemption Order; and
- has implemented a public alerting system as is required of low-power tourist information radio stations.

Programming issues

9. The Exemption Order exempts low-power radio stations that provide live or pre-recorded tourist-related information programming from the requirement to hold a broadcasting licence. Tourist-related information is niche programming aimed at tourists traveling within the city encompassed by the station's authorized service contours and should not contain programming that may overlap with conventional licensed radio stations. Tourists may include people visiting a city or people living in the community in which the station is located (the public) who are interested in tourist activities.
10. Specifically, paragraphs 4, 6 and 7 of the Exemption Order provide the following programming criteria:
 4. The programming provided by the undertaking consists of live or pre-recorded messages which provide the public with information about local traffic, weather and marine conditions, road and boating conditions, highway construction and closures, airport arrival and departure information, ferry and train schedules, current border crossing regulations and wait times, conditions on bridges and in mountain passes, advisories of approaching large vehicles (example: logging, construction, road maintenance and other large vehicles) and any other locally relevant information relating to attractions and events of interest to tourists.
 6. The programming provided by the undertaking contains no musical selections, except as incidental background music.
 7. The undertaking does not broadcast programming that is religious or political in nature.

Period between 16 February 2015 and 21 January 2016

11. At the hearing and in its written responses to Commission staff's requests for information, Myfm admitted to having broadcast programming that is not consistent with paragraphs 4, 6 and 7 of the Exemption Order, including:
 - news, including local and international news stories and international reports, as well as sports scores
 - non-local content, including:

- information and interviews that are not about a local event/attraction or tourism
- global safety and security issues
- general or human interest programming, including:
 - open-line talk shows (e.g. on topics such as extra-marital affairs)
 - literary stories
 - profiles (singers, historians, etc.)
 - history segments (non-local history information)
 - satirical commentary and news parodies
- music programming, including clips of music, song reviews and music discussions
- political and religious programming, including national and international politics and political profiles

12. Myfm stated that its original programming mix was developed based on its understanding of the purpose of the Exemption Order, which it asserted “refers to the provision of information of various types that would be of particular interest to tourists and to [the] public.”¹ Myfm stated that it misunderstood the intent of the word “public” and argued that it thought this meant that it could provide information to the general public of the City of Surrey.

13. In its 21 January 2016 letter as well as at the hearing, Myfm stated that a number of programs were discontinued following Commission staff’s letters. In particular, Myfm stated that after receiving a letter from Commission staff dated 24 December 2015, it reviewed its programming and discontinued all music programming, reports from India, sports scores and open-line programming. It also submitted that it made a greater effort to ensure its programming did not include political comments or commentary on controversial issues. At the hearing, Myfm stated that it stopped broadcasting news on 15 April 2016.

14. With respect to music programming, Myfm admitted to broadcasting music programming during the overnight period. Myfm explained that it believed that it was only required to operate in accordance with the Exemption Order during the “broadcast day” which is defined in the *Radio Regulations, 1986* (the Regulations) as the period between 6 a.m. and midnight. This is despite Commission staff pointing out to Mr. Pannu in a response to his July 2014 enquiry that exempt tourist

¹ Transcript, 16 May 2016 public hearing, volume 4, paragraph 5852.

information services are expected to operate in accordance with the Exemption Order at all times. Myfm indicated that it had ceased this practice after it received the 24 December 2015 letter from Commission staff which clarified that the notion of “broadcast day” contained in the Regulations does not apply to exempt radio stations.

15. In its response to Commission staff’s letters and again at the hearing, Myfm questioned the disqualification of certain content, arguing that topics such as entertainment and movie trailers, technology, short music selections and non-local events could be relevant to tourists and in line with the Exemption Order.
16. The Commission considers that discussions about movies and entertainment and the playing of trailers are not consistent with the Exemption Order as they are of an entertainment nature and purely to provide amusement rather than provide essential information on the location to view the movie, the price of tickets and showtimes.
17. With respect to technology information, Myfm submitted, for example, that the city’s website and app could be useful to tourists and residents carrying out touristic activities. The Commission finds that, while identifying that city information, such as hours of operation and features available at certain locations, can be found through an app is consistent with the Exemption Order, information about types of technology and apps available and their features as well as where to purchase them is not.
18. With respect to short musical segments, incidental music is normally played in a program that is not primarily musical. It is background music and is intended to add atmosphere and not to be the main focus of the program. The Commission considers that a short musical segment broadcast in the context of an upcoming event is consistent with the Exemption Order if the musical segment is played in the background while a host advertises the event, its location, time and cost of tickets. A clip of music played to introduce the event or to fade out of the announcement on the other hand is not consistent with the Exemption Order.
19. Finally, broadcasts related to events occurring abroad (e.g. political instability in Punjab), whether they be political or of another nature, are not consistent with the Exemption Order. Factual information about flights to a specific location that may be delayed due to an event that occurred at that location (e.g. an earthquake) could be briefly relayed to tourists and would be consistent with the Exemption Order. However, discussions on an event or information not pertinent to flight or border delays, airport closures and increased airport security would not be consistent with the Exemption Order.

Period between 21 January 2016 and the hearing

20. At the hearing and in its letters to the Commission, Myfm indicated that, following the Commission staff letter dated 24 December 2015, it had ceased broadcasting programming that is inconsistent with the Exemption Order. However, the Commission monitored the station and found ongoing instances of the station not operating in accordance with the Exemption Order. In particular, the following

programming broadcast on 2 February 2016 appear to be inconsistent with paragraph 4 of the Exemption Order:

- news, including local, provincial and international news as well as gold prices
- general or human interest content, including:
 - health information and studies (e.g. pesticides in food, organic food, salt, nutrition and obesity, children’s health, breastfeeding)
 - technology
 - Bollywood news, gossip and entertainment
 - segments on phobias, the world’s biggest companies, etc.
 - stories and jokes
 - poetry
- non-local content, including:
 - international travel information (information on travelling abroad and advisories from the Government of Canada, e.g. travelling to Brazil and the Zika virus)
 - business opportunities in other countries
 - renewal energy in Denmark
 - political talk on cultural relation issues and problems

21. At the hearing, Myfm confirmed that it had broadcast this programming. It also admitted that this programming is inconsistent with paragraph 4 of the Exemption Order and reiterated that it no longer broadcasts this type of content. Myfm further stated that it was in the process of changing its programming at the time the Commission conducted an analysis of its programming, which is why some content did not reflect tourist-specific information.

22. Myfm stated that it regretted not having made changes sooner as it acknowledged that there was a transition period in February 2016 where it removed and corrected content to solely target Surrey listeners. In light of Commission staff’s letters, Myfm decided to ultimately “scale back [its] programming completely so that it no longer includes the type of content that could be considered controversial.”²

² Transcript, 16 May 2016 public hearing, volume 4, paragraph 6903

23. Myfm also stated that, starting in March 2016, Mr. Pannu, with the help of an advisory committee and other employees, undertook to figure out how to operate the station in accordance with the Exemption Order and to have it monitored daily. Myfm acknowledged that it is responsible for ensuring the station is operated within the boundaries of the Exemption Order and indicated that it had taken the necessary steps to do so. Myfm reiterated that it would follow the Commission's interpretation of the Exemption Order and its determinations as to whether particular types of programs are or are not consistent with it. At the hearing and in its 15 April 2016 letter, Myfm asserted that it had changed its programming until it received greater clarity regarding the acceptable scope of programming and had limited its programming to pre-recorded content, except for updates related to traffic, weather, gas, exchange rates and border delays as well as select event information.

Post-hearing monitoring

24. At the hearing, Myfm was asked to provide the audio recordings for the week of 1 to 7 May 2016 as well as a detailed program schedule. The Commission analyzed the audio recordings for 3 and 7 May. The following programming appears to be inconsistent with paragraph 4 of the Exemption Order:

- segment on the Sydney Harbour Bridge in Australia
- segment on courses offered at the University of British Columbia
- interview/talk show with guest singers
- segment where a host requests baby supplies for residents of Fort McMurray displaced by the fire

25. A review of the program schedule reveals that the following programming may also be inconsistent with paragraph 4:

- interviews broadcast on 4, 5, 6 and 7 May 2016
- pre-recorded messages:
 - “Spend time with family—not on phone—a message”
 - “Information about seatbelts” (unless this is purely to inform tourists that seatbelts are mandatory in Surrey)
 - “Weekend destinations” (unless this refers to tourist locations around Surrey)

Commission's determination

26. In light of the above, the Commission finds Myfm and Mr. Pannu to have been broadcasting programming on VF2689 that is inconsistent with the programming requirements set out in paragraphs 4, 6 and 7 of the Exemption Order.

Technical issues

27. In addition to programming requirements, the Exemption Order sets out technical requirements for the operation of exempt tourist information radio stations. Specifically, paragraphs 1 and 2 of the Exemption Order set out the following:
1. The undertaking meets all technical requirements of the Department of Industry (the Department) and has acquired all authorizations or certificates prescribed by that Department.
 2. The low-power undertaking operates between 525 kHz and 1705 kHz in the AM frequency band or between 88 MHz and 107.5 MHz in the FM frequency band. The undertaking broadcasts with a transmitter power of less than 100 watts in the AM band, and with a maximum effective radiated power of 50 watts with a maximum transmitting antenna height of 60 metres in the FM band as defined by the Department of Industry in Parts II and III of its *Broadcasting Procedures and Rules*.
28. At the hearing, Myfm confirmed that VF2689 operates at 106.9 MHz (channel 295LP) with an effective radiated power of 41 watts and an effective height of antenna above average terrain of 51.7 metres. These parameters correspond to the information shown on the broadcasting certificate issued by the Department for the station.
29. The Commission, as part of its investigation into Myfm and Mr. Pannu's compliance with the Act, commissioned an engineering study, the results of which revealed a high probability that VF2689 was operating in breach of its authorized operating technical parameters. In addition, the Department conducted monitoring of the station in March 2016 and performed an on-site inspection on 5 April 2016. Whereas the on-site inspection report noted that the transmitter was set appropriately, the results of the monitoring noted inconsistencies between the measurements recorded in March 2016 and those taken at the time of the on-site inspection.
30. According to Mr. Pannu, the inconsistencies were due to intermittent electrical power interruptions that occurred during the period prior to the Department's inspection, and the effect of those interruptions on the transmitter as it reboots. Mr. Pannu subsequently admitted that the transmitter settings for VF2689 were not properly programmed to automatically reset to the proper power levels.
31. Based on the information gathered at the hearing and the technical reports on the record of this proceeding, the Commission finds that Myfm was most likely operating VF2689 outside of the authorized technical parameters before 5 April 2016.

32. In light of Myfm's responses during the hearing, the Commission finds that the procedures used by Myfm and Mr. Pannu in setting up and monitoring its equipment led to deficiencies in ensuring that the station operates within its authorized technical parameters.

Emergency alerting system

33. Paragraph 10 of the Exemption Order requires undertakings operating under that exemption order to have implemented a public alerting system by no later than 31 March 2015.

34. In its response letter of 21 January 2016, Myfm admitted to not having implemented the required public alerting system and stated that it was not aware that this requirement applied to low-power stations. Myfm indicated that it had engaged its staff to source the necessary equipment in order to install the system as soon as possible. However, at the time of the hearing, Myfm still had not implemented the necessary public alerting system, noting delays in the provision of the equipment.

35. At the hearing, Myfm committed to cease operations immediately and to remain off air until the emergency alerting system is operational. It confirmed that the station had ceased broadcasting as of 19 May 2016. The Commission received confirmation that the necessary equipment was installed and that the station had resumed operations on 22 July 2016.

36. In light of the above, the Commission finds Myfm to have been operating VF2689 without the necessary public alerting system as required under the Exemption Order.

Conclusion

37. To broadcast in Canada, a broadcasting undertaking must have a licence or operate pursuant to an exemption. To this end, the Commission has issued various exemption orders, pursuant to section 9(4) of the Act, which permit entities to operate broadcasting undertakings without a licence. However, these entities must at all times operate strictly within the terms set out in the exemption order pursuant to which they seek to operate. Further, it is the responsibility of the operator of the undertaking to ensure it is doing so.

38. This responsibility includes knowing the terms and conditions of the exemption and the technical parameters within which the undertaking may operate. Mr. Pannu indicated in his 21 January 2016 response and at the hearing that he was not aware of his obligations under the Exemption Order. For example, he stated that he was not aware of the obligation regarding the public alerting system or that the "broadcast day" as defined in the Regulations (that is, excluding the period between midnight and 6 a.m.) did not apply to exempt services.

39. Furthermore, Mr. Pannu tried to deflect responsibility for his programming choices onto Commission staff, suggesting both in his response to Commission staff's letters and at the hearing that Commission staff had said his programming was acceptable.

While the Commission acknowledges that Mr. Pannu did seek certain information regarding his operations from Commission staff, it appears that his interpretation of the responses ignored both the express terms and the spirit of the Exemption Order, pursuant to which he sought to operate VF2689. For example, nowhere in the Exemption Order is there any reference to the “broadcast day” as defined in the Regulations and staff pointed this out to Mr. Pannu in response to his inquiry in July 2014. Despite this information, Mr. Pannu maintained that he was unaware that he had to operate in accordance with the Exemption Order at all times until staff explained that in its letter of 24 December 2015.

40. The demonstrated unawareness of the undertaking’s obligations and the attempts by Mr. Pannu to deflect responsibility suggest that Mr. Pannu does not respect the Commission’s authority or take his responsibilities as a broadcaster in the Canadian broadcasting system seriously. The Commission reminds Mr. Pannu that it is incumbent upon him as a Canadian broadcaster to be aware of his regulatory obligations and that it is his responsibility to ensure that his programming meets the criteria set out in the terms of the Exemption Order pursuant to which he purports to operate the undertaking.
41. In light of all of the above and of the admissions by Myfm and Mr. Pannu at the hearing, the Commission finds that Myfm and Mr. Pannu have not been broadcasting on VF2689 in accordance with the terms of the Exemption Order, pursuant to which they purport to operate the station. Consequently, the Commission finds Myfm and Mr. Pannu to have been operating a broadcasting undertaking in Canada without a licence, in contravention of the Act.

Issuance of mandatory orders

42. Section 12(2) of the Act provides the following:

The Commission may, by order, require any person to do, without delay 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 under this Part or 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, to any such regulation, licence, decision or order or to section 34.1.

43. Operating without a licence is one of the most serious offences under the Act. In light of this and the finding that Myfm and Mr. Pannu are operating a broadcasting undertaking in Canada without a licence, the Commission considers it appropriate to issue mandatory orders pursuant to section 12(2) of the Act.
44. Accordingly, pursuant to section 12(2) of the Act, the Commission hereby **orders** Surrey Myfm inc. and Ravinder Singh Pannu to not carry on a broadcasting undertaking in Surrey, British Columbia, or anywhere else in Canada, except in compliance with the Act. A mandatory order to this effect is set out in Appendix 1 to this decision.

45. The Commission also **orders**, pursuant to section 12(2) of the Act, that where Surrey Myfm inc. or Ravinder Singh Pannu carry on a broadcasting undertaking in whole or in part in Canada pursuant to an exemption under the Act, they must do so at all times in accordance with the terms of the exemption pursuant to which they purport to operate. A mandatory order to this effect is set out in Appendix 2.
46. The Commission is aware that Mr. Pannu operates other licensed and exempt broadcasting undertakings. For greater clarity, the terms of these two mandatory orders apply to Mr. Pannu directly; given that the undertaking operates under his ownership and control, Mr. Pannu is the principal player in the situation that led to the contraventions of the Act identified in the present decision. As a result, failure to comply with the Act or an exemption in regard to any of the undertakings that he operates may constitute a breach of these orders.
47. Furthermore, given the breadth of the programming inconsistencies and the concerns regarding the technical operations of VF2689, the Commission intends to continue monitoring the operations of Myfm and Mr. Pannu. Accordingly, pursuant to section 12(2) of the Act, the Commission **orders** Surrey Myfm inc. and Ravinder Singh Pannu to submit reports relating to the programming and operations of VF2689 as set out below and as may be requested by the Commission from time to time. A mandatory order to this effect is set out in Appendix 3.
48. The Commission also **orders**, pursuant to section 12(2) of the Act, Surrey Myfm inc. and Ravinder Singh Pannu to retain a clear and intelligible audio recording or exact copy of all matter broadcast on VF2689 for four weeks from the date of the broadcast as well as a detailed program schedule, and to submit the audio recording or exact copy and program schedule to the Commission upon its request. A mandatory order to this effect is set out in Appendix 4.
49. In regard to the reporting required under the mandatory order, the Commission **directs** Myfm and Ravinder Singh Pannu to submit, **by 19 December 2016**, a report to the Commission setting out the station's internal policies and procedures related to the following:
- responsibilities for the day-to-day operations of the station;
 - name of the individual responsible for overseeing the creation and broadcast of all programming, including whether the programming meets the criteria set out in the Exemption Order;
 - criteria for each of the programs and topics broadcast; and
 - mechanisms for ensuring the station operates in accordance with the Exemption Order.
50. The Commission also **directs** Myfm and Ravinder Singh Pannu to submit the following:

- a field measurement report produced by a Canadian licensed professional engineer **by 19 December 2016**. The Commission will provide guidance for the statement of work that will dictate the content of the report and will request additional field measurements as deemed necessary;
- a self-monitoring plan **by 19 December 2016** detailing the procedures and methods that will be used to ensure the station is operating within the technical requirements set out in the Exemption Order; and
- self-monitoring reports on a quarterly basis detailing technical issues encountered and how the station is operating within the technical requirements of the Exemption Order for that quarter.

Secretary General

Related documents

- *Notice of hearing – Addition of three items*, Broadcasting Notice of Consultation CRTC 2016-64-1, 4 March 2016
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders - Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014

Appendix 1 to Broadcasting Decision CRTC 2016-414

Broadcasting Mandatory Order CRTC 2016-415

Surrey Myfm inc. and Ravinder Singh Pannu are hereby ordered, pursuant to section 12(2) of the *Broadcasting Act*, to not carry on a broadcasting undertaking in Surrey, British Columbia, or anywhere else in Canada, except in compliance with the *Broadcasting Act*.

Appendix 2 to Broadcasting Decision CRTC 2016-414

Broadcasting Mandatory Order CRTC 2016-416

Where Surrey Myfm inc. or Ravinder Singh Pannu carry on a broadcasting undertaking in whole or in part in Canada pursuant to an exemption under the *Broadcasting Act*, Surrey Myfm inc. and Ravinder Singh Pannu are hereby ordered, pursuant to section 12(2) of the *Broadcasting Act*, to do so at all times in accordance with the terms of the exemption pursuant to which they purport to operate the undertaking.

Appendix 3 to Broadcasting Decision CRTC 2016-414

Broadcasting Mandatory Order CRTC 2016-417

Surrey Myfm inc. and Ravinder Singh Pannu are hereby ordered, pursuant to section 12(2) of the *Broadcasting Act*, to submit reports relating to the programming and operations of VF2689 as set out in *Surrey Myfm inc. and Ravinder Singh Pannu – Issuance of mandatory orders*, Broadcasting Decision CRTC 2016-421, 20 October 2016 and as may be requested by the Commission from time to time.

Appendix 4 to Broadcasting Decision CRTC 2016-414

Broadcasting Mandatory Order CRTC 2016-418

Surrey Myfm inc. and Ravinder Singh Pannu are hereby ordered, pursuant to section 12(2) of the *Broadcasting Act*, to retain a clear and intelligible audio recording or exact copy of all matter broadcast on VF2689 for four weeks from the date of the broadcast as well as a detailed program schedule, and to submit the audio recording or exact copy and program schedule to the Commission upon its request.