



Broadcasting Decision CRTC 2005-29

Ottawa, 31 January 2005

CJRN 710 Inc.

Fort Erie and St. Catharines, Ontario

Application 2002-0456-1

Public Hearing in the National Capital Region

7 June 2004

CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines – Licence renewal

The Commission renews the broadcasting licence for the radio programming undertaking CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines, from 1 February 2005 to 31 August 2006.

The application

1. The Commission received an application by CJRN 710 Inc. (CJRN) to renew the broadcasting licence for the radio programming undertaking CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines (collectively, CKEY-FM), which expires on 31 January 2005.

Interventions

2. The Commission received five interventions in connection with this application, including three expressing support.
3. The Commission received an intervention in opposition to the renewal of the licence for CKEY-FM from Mr. Robert Vernon, a former employee of CJRN, as well as an intervention commenting on the application from Mr. Nicholas Schimmelpenninck. The concerns raised by Mr. Vernon and Mr. Schimmelpenninck are addressed in the following sections of this decision.

Issues

4. In Broadcasting Notice of Public Hearing CRTC 2004-3, 7 April 2004 (Notice of Public Hearing 2004-3), the Commission stated that it wished to explore three issues with CJRN at the hearing: the control of the station and its programming by the licensee, the level of local programming broadcast, and the licensee's compliance with the requirements of the *Radio Regulations, 1986* (the Regulations) concerning program logs, music lists, and the broadcast of Canadian musical selections.

Control of the station and its programming

The interventions

5. In his intervention, Mr. Vernon submitted that programming on CKEY-FM originates in studios in Buffalo, New York owned and operated by an American company, Citadel Broadcasting Corporation (Citadel), and that Citadel actually owns and controls the licensee through various financial loans and a marketing agreement. Mr. Schimmelpenninck alleged that all of CKEY-FM's programming originates in Buffalo under the supervision of an American programmer, Mr. Phil Becker.

The licensee's replies

6. In its written reply addressing the allegations in Mr. Vernon's intervention, CJRN stated that Citadel acts solely as CJRN's advertising sales representative in the United States, and has no controlling interest in, or loan arrangements with, CJRN. CJRN also responded in writing to the intervention filed by Mr. Schimmelpenninck. According to the licensee, the intervener is an employee of an American broadcasting company that operates a Buffalo radio station in a format that competes with CKEY-FM's format and targets Canadian listeners and advertising. CJRN flatly rejected the intervener's allegations.

The Commission's analysis and determination.

7. The licence for CKEY states: "Except as authorized by the Commission, this broadcasting undertaking shall be operated in fact by the licensee itself. This licence cannot be transferred or assigned." In Notice of Public Hearing 2004-3, the Commission stated that it wished "to discuss with the licensee whether, at any time during the period of the current licence, the undertaking or its programming was not under control of the licensee."
8. The Commission notes that, in 1998, CJRN entered into a joint sales agreement (JSA) with Citadel for the purpose of attracting advertising sales in the United States, with the licensee to receive one-half of all advertising revenues generated by Citadel, minus sales commission. The licensee would continue to be responsible for supplying all programming for the station, and for ensuring compliance with all broadcasting regulations.
9. Based on figures provided by the licensee, the Commission notes that advertising sales generated by the JSA in the Buffalo market have constituted a significant portion of CJRN's total local sales since 2000. When this fact is considered, along with Citadel's position as the sixth-largest radio broadcasting company in the United States, it is not unreasonable to question whether Citadel might have a certain level of influence on the operation of the licensee station. Moreover, a review of Citadel's website reveals that CKEY-FM is listed as one of its stations, located in Buffalo.

10. At the hearing, CJRN stated that at no time did it delegate any responsibilities for decisions or for the day-to-day operation of CKEY-FM. It considered that the significant proportion of sales coming from outside Canada would be reduced as Canadian advertisers become more familiar with CKEY-FM's youth-oriented format and its rising popularity. There was also a suggestion that the JSA could be renegotiated or terminated.
11. The Commission notes the licensee's firm assurances that, at no time, did Citadel control CJRN, or make decisions on the day-to-day operations of the station or on its programming. While programming was produced in Citadel's Buffalo studios involving some Citadel personnel, a member of CJRN's staff supervised and controlled all activities. Moreover, Citadel's services were paid for by the licensee. Following its review of the sales agreement between CJRN and Citadel, and in light of the licensee's explanations and commitments, the Commission finds that no change of control has taken place, and is satisfied that the licensee has been responsible for its programming.

Local programming

The intervention

12. In his intervention, Mr. Vernon alleged that CKEY-FM is branded as a Buffalo station, rather than one serving the Niagara region of Canada, that the studios are below professional broadcasting standards, and that the station does not employ Canadian talent or serve the local community.

The licensee's reply

13. In its written reply to Mr. Vernon's concerns, CJRN stated that CKEY-FM is identified often by its call sign and its community of origin, Fort Erie, and that CKEY-FM broadcasts a variety of spoken word programming, including news, pertaining to the Fort Erie/Niagara region. CJRN further stated that CKEY-FM's studio facilities are not below professional standards, and are in fact undergoing a significant upgrade. The licensee added that CKEY-FM serves a Canadian audience and has actually repatriated Canadian listeners.

The Commission's analysis and determination

14. The licensee is currently subject to the conditions of licence set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999 (Public Notice 1999-137). Condition of licence number 9 provides that CJRN must refrain from soliciting or accepting local advertising for broadcast on CKEY-FM during any broadcast week when less than one-third of the programming aired is local. The definition of local programming, as set out in *Policies for local programming on commercial radio stations and advertising on campus stations*, Public Notice CRTC 1993-38, 19 April 1993, is as follows:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast either simultaneously

or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.

In their local programming, licensees must include spoken word material of direct and particular relevance to the community served, such as local news, weather and sports, and the promotion of local events and activities.

15. In order to determine the level of local programming broadcast on CKEY-FM, particularly spoken word, the Commission conducted an analysis of 41 hours of the station's programming during the week of 16 to 22 November 2003. The Commission found that, other than the promotion of two local events, there was no spoken word material of direct and particular relevance to the community served, such as local news, weather, sports, and the promotion of local events and activities.
16. In response to this analysis and its result, the licensee advised the Commission that CKEY-FM had begun to broadcast weather forecasts. It added, however, that the block of news programming broadcast by most radio stations at the top of the hour during the morning drive period was not suitable in its case, given that its target audience consists of those from 12 to 24 years of age and the fact that, in its words, CKEY-FM was not a "regular" station. The licensee added that, in its view, the only spoken word programming necessary was updates on entertainment headlines, coming events and "talk breaks."
17. The Commission notes that weather reports are only one of the programming elements required under the licensee's condition of licence number 9. The Commission therefore finds that CJRN failed to demonstrate compliance with condition of licence number 9 during the week of 16 to 22 November 2003.
18. The Commission is especially concerned by the absence of news programming of particular relevance to listeners in Niagara Falls/St. Catharines. In the Commission's view, such programming plays a crucial role in providing listeners with a diversity of views on matters of public concern, an objective of the *Broadcasting Act*. With respect to the licensee's suggestion that the broadcast of news at the top of the hour was unsuitable, given the station's format and target audience, the Commission notes that it does not require that the broadcast of local news adhere to any particular style, format or schedule. It does, however, require that local programming, including news, be made available. In this regard, the licensee's statements about entertainment reports only serve to emphasize its failure to grasp the requirements of condition of licence number 9 and its lack of understanding of the definition of news¹, which specifically excludes entertainment reports.

¹ The program category of news is defined in *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000.

19. The Commission is not satisfied with the level of local service provided by CJRN to the Fort Erie/Niagara market and requires the licensee to take immediate steps to enhance the news component of the station's programming. Specifically, in addition to conditions of licence specified in Public Notice 1999-137, the Commission requires the licensee, by **condition of licence**, to broadcast at least three hours of news in each broadcast week. The Commission notes that this minimum level of news programming is consistent with the minimum level that had generally been required of commercial radio licensees, by condition of licence, under the former radio policy.

Compliance with the *Radio Regulations, 1986*

20. In Notice of Public Hearing 2004-3, the Commission stated that it would "wish to discuss with the licensee its compliance with subsections 8(1) and 8(4) of the Regulations concerning program logs, paragraph 9(3)(b) regarding a music list, and subsections 2.2(8) and 2.2(9) concerning the broadcasting of Canadian musical selections, during the broadcast week between 6:00 a.m. and 6:00 p.m. Monday to Friday."
21. When the Commission requested that CJRN supply logs for the broadcast week of 16 to 22 November 2003, it found a total of 42 hours of programming missing from the record. The licensee indicated that automation problems were the cause of its logging problems, and that steps had been taken to rectify the situation. Complete logs were later filed.
22. The Commission also requested the licensee to file "a list of musical selections in the order in which they are broadcast," including "the title and performer of each musical selection and a legend that identifies any Canadian musical selection, any hit, any instrumental selection, and any category 3 musical selection." However, the CKEY-FM music list did not identify Canadian musical selections and hits, and for one period, specifically 9:00 p.m. to midnight on 22 November 2003, the titles and performers of all musical selections were missing.
23. With respect to music identification, the licensee stated that CKEY-FM does not broadcast "hits," and that the problem of furnishing a complete music list would be rectified. The licensee has subsequently filed a complete music list for the period in question.
24. Regarding program logs and music lists, the Commission finds that the licensee was in breach of the Regulations. It notes the licensee's assurances of full compliance in the future, and reminds CJRN that logs must include, among other details, all of the station's news content.

Conclusion

25. On the basis of its review of this licence renewal application, the licensee's past performance and the serious concerns outlined above, the Commission **renews** the broadcasting licence for the radio programming undertaking CKEY-FM Fort Erie, and its transmitter CKEY-FM-1 St. Catharines, from 1 February 2005 to 31 August 2006. The licence will be subject to the **conditions of licence** set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, as well as to the further condition specified herein, requiring the broadcast of a weekly minimum of three hours of news. The licence period granted herein will allow the Commission to assess, at an early date, the licensee's compliance with the *Radio Regulations, 1986* and all licence conditions, specifically those regarding local programming, logger tapes and music lists..

Employment equity

26. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>