



**DECISION 254/2010, DATED 17 NOVEMBER, OF THE PLENARY SESSION OF THE
CATALAN AUDIOVISUAL COUNCIL**

**Authorization for the lease of the licences for the provision of audio broadcasting
services in the towns of Lleida (93.4 Mhz), Sort (89.6 Mhz) and Vielha (97.2 Mhz).**

Background

1. On 21 July 2010 (entry register no. 1979/2010) Mr Robert Serentill Utgés, in name and representation of Ràdio Terraferma de Lleida, SA and Mr Raúl Rodríguez González, in name and representation of Ràdio Lleida, SL filed with this Council a letter in which they requested authorization for a proposed lease of the concessions for the public audio broadcasting service on metric waves with frequency modulation in the towns of Lleida (103.6 Mhz), Sort (89.6 Mhz) and Vielha (97.2 Mhz) to Ràdio Lleida, SL.

2. On 23 September 2010, the Catalan Audiovisual Council asked Ràdio Terraferma de Lleida, SA to provide it with the documents required so that the Council could examine the transfer transactions for which authorization had been requested (dispatch register no. 994/2010). The requested documents were submitted to the Council on 18 October and 3 November 2010 (entry register no. 2365/2010 and 2540/2010).

3. Decision 236/2010, of 20 October 2010, of the Plenary Session of the Catalan Audiovisual Council extended the term for ruling on and giving notification of the procedure for the application for authorization for the lease of the licences.

4. Ràdio Terraferma de Lleida, SA, is the holder of the licences for the provision of the public audio broadcasting service on metric waves with frequency modulation in the towns of Lleida (103.6 Mhz), Sort (89.6 Mhz) and Vielha (97. 2 Mhz). These licences were awarded as a concession by a Decision of the Plenary Session of the Catalan Audiovisual Council dated 7 November 2008, and on 4 December 2008 the corresponding concession contracts were signed.

Subsequently, Decision 193/2010, of 28 July, of the Plenary Session of the Catalan Audiovisual Council turned the said concessions into licences for the provision of audiovisual media services.

5. Having regard to the report by the Legal Department of the Council.

Legal grounds

One. Legal framework





On 1 May this year General State Law 7/2010, of 31 March, on audiovisual media services, (hereinafter referred to as the LGCA), came into force, and according to its Sixth Final Provision it is basic legislation. Nonetheless, as part of the legislative implementation afforded to the regions the provisions of Law 22/2005, of 29 December, on audiovisual communication in Catalonia (LCA) remain applicable in all aspects in which they do not conflict with the LGCA.

It should be borne in mind that the LCA does not regulate the leasing of licences and hence the State law is applicable in this case. Consequently, Article 29 of the LGCA, which regulates legal transactions for licences for audiovisual media services and establishes that licences may be leased with the prior authorization of the broadcasting authority with jurisdiction and provided that a series of conditions are met, is applicable to this transaction.

Specifically, Article 29 of the LGCA states the following:

1. 1. The formalization of legal transactions involving an audiovisual media services licence requires the prior authorization of the broadcasting authority with jurisdiction and are subject, in any case, to the payment of a fee to be determined by the national Government in the case of nationwide licences or the autonomous regions in all remaining cases. This authorization may only be refused if the applicant does not demonstrate compliance with all the conditions set by law to obtain the said licence or they do not replace the previous holder in the latter's obligations.

2. Transfer and lease are also subject to the following conditions:

a) At least two years must have elapsed since the initial award of the licence before either of the types of legal transaction may be formalized.

b) When carried out with natural or legal persons who are nationals of countries that are not members of the European Economic Area, they are subject to the principle of reciprocity and accrue the payment of the fee set by law. Pursuant to the provisions of international treaties and conventions to which Spain is a party, and with the prior report of the broadcasting authority with jurisdiction, the Council of Ministers or the body with jurisdiction in the autonomous region may exceptionally authorize a transaction for reasons of general interest when this principle has not been met.

c) If the licence involves the award of a complete multiplex or two or more channels, no more than 50% of the capacity of the licence may be leased. The lease must comply with the provisions of Article 24.3 relating to the occupation of the radio spectrum by the multiplex and the operation of channels featuring wholly or partially paid-for content.

In all cases, the leasing of channels may only be authorized if the lessee certifies beforehand their compliance with all the conditions established by law for obtaining the licence.

d) Subleasing is prohibited under all circumstances.

e) In compliance with the bid which won the award of the licence.

In this respect, the Catalan Audiovisual Council is the broadcasting authority with jurisdiction in Catalonia to rule on legal transactions concerning audiovisual media services licences, that is to say on the transfer and leasing of licences.

It should also be remembered that, in accordance with section 1 of Article 2 of the LGCA, "The lessee of an audiovisual media services licence is considered to be a service provider".



Two. Transactions subject to authorization

Authorization has been requested for three proposed leases of the licences for the provision of audio broadcasting services for the towns of Lleida (103.6 Mhz), Sort (89.6 Mhz) and Vielha (97.2 Mhz) by their current holder, Ràdio Terraferma de Lleida, SA, to Ràdio Lleida, SL, a newly founded company.

The shareholding structure of the lessee company is as follows:

- Sociedad Española de Radiodifusión, SL (44.33%)
- Prensa Leridana, SL (33.5%)
- Radio España de Barcelona, SA (22.16%)

According to the file, in the event that the transactions are approved by the Catalan Audiovisual Council the general conditions for leases of licenses are as follows:

- Term of lease: 5 years, renewable for equal periods until the term of validity of the licence has expired.
- Price: to be determined.
- Use of the licence, with absolute availability with respect to the essential aspects inherent in a radio station.
- Causes of termination: a) Loss of the licence in a final ruling; b) Expiry of the term established in the lease agreement unless the parties agree to renew it and c) Breach by either party of the commitments they accepted as part of its provisions.
- Submission to basic national legislation and legislation enacted by regional governments in the exercise of their powers, including General State Law 7/2010, of 31 March, on audiovisual media services and Law 22/2005, of 29 December, on audiovisual communication in Catalonia, as well as the obligations inherent in the license.

The period of two years that is required by law since the initial award of the licence for the formalization of the aforementioned legal transactions has elapsed, and the lessee company complies with the conditions established by law to obtain a license.

Three. Validity of the concession legal system

Decision 193/2010, of 28 July, of the Plenary Session of the Catalan Audiovisual Council, which turned the concessions that are the subject of this Decision into licences for the provision of audiovisual media services, establishes that the applicable substantive system is the one established by prevailing regulations together with the specific obligations and commitments assumed by the provider in the original tender.

In this respect, Ràdio Lleida, SL, the lessee of the licences for the provision of audio broadcasting services in the towns of Lleida (103.6 Mhz), Sort (89.6 Mhz) and Vielha (97.2 Mhz) shall have to comply with the obligations, commitments and offers signed by Ràdio Terraferma de Lleida, SA in the tender in which the concessions were awarded and replace the latter in them. Likewise, the lessee company is also obliged to comply with the technical parameters assigned to the stations.



Finally, it should be remembered that under point d) of section 2 of Article 29 of the LGCA, the subleasing of licences is prohibited.

In the light of the foregoing, the Plenary Session of the Catalan Audiovisual Council has adopted the following:

DECISIONS

1. To authorize Ràdio Terraferma de Lleida, SA, to lease to Ràdio Lleida, SL, the licences for the provision of audio broadcasting services in the towns of Lleida (103.6 Mhz), Sort (89.6 Mhz) and Vielha (97.2 Mhz). This authorization shall be subject to the submission to this Council within two months from notification of this Decision of a copy of the relevant lease agreements signed by both parties, as well as an affidavit signed by the legal representative of Ràdio Lleida, SL, stating that the said company replaces Ràdio Terraferma de Lleida, SA in the obligations and commitments that the latter entered into, and that it undertakes to observe the offers by virtue of which the licences were awarded.
2. To notify Ràdio Terraferma de Lleida, SA and Ràdio Lleida, SL, of this Decision.

Barcelona, 17 November 2010

Ramon Font Bové
President

Santiago Ramentol Massana
Secretary