



## Broadcasting Decision CRTC 2006-190

Ottawa, 15 May 2006

### **Kevin Shattock**

Moose Jaw, Saskatchewan

### **Golden West Broadcasting Ltd.**

Moose Jaw, Saskatchewan

### **Harvard Broadcasting Inc.**

Moose Jaw, Saskatchewan

*Applications 2004-1175-2, 2005-0868-2 and 2005-0896-3*

*Public Hearing in the National Capital Region*

*16 January 2006*

### **English-language FM radio station in Moose Jaw**

*The Commission **approves** an application by Golden West Broadcasting Ltd. for a broadcasting licence to operate a new English-language, commercial FM radio station in Moose Jaw.*

*The Commission **denies** the applications by Kevin Shattock and Harvard Broadcasting Inc. for broadcasting licences to operate English-language, commercial FM radio stations in Moose Jaw.*

### **The call for applications**

1. On 13 May 2005, the Commission announced that it had received an application for a broadcasting licence to provide a commercial radio service to Moose Jaw, Saskatchewan and called for applications from other parties wishing to obtain a licence to serve this area (see *Call for applications for broadcasting licences to carry on radio programming undertakings to serve Moose Jaw, Saskatchewan*, Broadcasting Public Notice CRTC 2005-49). The Commission advised potential applicants that they would be required to provide evidence giving clear indication that there is a demand and a market for the service they propose, and that they should address, among other things:
  - the contribution that the proposed service will make to achieving the objectives established in the *Broadcasting Act* (the Act) and, in particular, to the production of local and regional programming;

- the factors relevant to the evaluation of applications, as outlined in *Introductory statement – Licensing new radio stations*, Decision CRTC 99-480, 28 October 1999, these being the quality of the application (including the business plan), the diversity of news voices, market impact and the competitive state of the market;
- the means by which the applicant will promote the development of Canadian talent, including local and regional talent;
- an analysis of the markets involved and potential advertising revenues, taking into account the results of any survey undertaken supporting the estimates; and
- evidence as to the availability of financial resources consistent with the requirements established in the financial projections of the applicant's business plan.

### **The applications**

2. The Commission received two applications in response to its call: one by Golden West Broadcasting Ltd. (Golden West) and the other by Harvard Broadcasting Inc. (Harvard). These, together with an application by Kevin Shattock (Shattock), the application that prompted the call, were considered at the 16 January 2006 public hearing in the National Capital Region.
3. All three applicants requested broadcasting licences for new English-language, commercial FM radio stations to serve the Moose Jaw market. Shattock proposed to operate at 99.3 MHz (channel 257LP) with an effective radiated power (ERP) of 45.92 watts<sup>1</sup>; Golden West proposed to operate at 103.9 MHz (channel 280C1) with an ERP of 100,000 watts; and Harvard proposed to operate at 99.9 MHz (channel 260C1) with an ERP of 100,000 watts. The applications were deemed to be competitive with each other.

### **Shattock**

4. Shattock proposed a new FM radio station offering a Christian music service with at least 95% of the weekly total music drawn from subcategory 35 (Non-classic religious). At least 10% of category 3 (Special interest) musical selections would be devoted to Canadian musical selections, which is the minimum level required by the *Radio Regulations, 1986* (the Regulations).

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<sup>1</sup> The applicant initially proposed to operate at 99.3 MHz (channel 257LP) with an effective radiated power (ERP) of 45.92 watts, not at 101.9 MHz (channel 270LP) with an ERP of 46 watts, as had been indicated in Broadcasting Notice of Public Hearing CRTC 2005-10, 15 November 2005. The Department of Industry later gave the proposal technical acceptability under 101.9 MHz.

5. In describing its programming plans in its application and in response to the Commission's questions, Shattock proposed a number of different levels of local and automated programming. Shattock also proposed to broadcast 42 hours of spoken word programming in each broadcast week, including 12 hours 35 minutes of news. He also proposed to provide programs for youth, and programs dedicated to the Sudanese and Liberian cultural groups in the Moose Jaw community.
6. Shattock stated that the proposed radio station would broadcast some religious programming, as defined in *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993 (the Religious Broadcasting Policy), but did not clearly indicate the number of hours of religious programming that would be broadcast. Shattock did not indicate how it would ensure balance in the religious programming in accordance with the provisions of the Religious Broadcasting Policy.
7. With respect to Canadian talent development (CTD), the applicant indicated that it would participate in the CTD plan established by the Canadian Association of Broadcasters (CAB). This plan calls for minimum contributions of \$3,000 in each broadcast year by commercial radio stations serving markets the size of Moose Jaw. The contributions must be made to eligible third parties for the development of Canadian musical and other artistic talent. The applicant stated that its commitment would represent a contribution of \$21,000 over a seven-year licence term

#### **Golden West**

8. Golden West owns and operates the two incumbent commercial radio stations that currently serve Moose Jaw, namely, CHAB, which operates in a Greatest Hits music format, and CILG-FM, which operates in a Country music format. Golden West proposed a new commercial FM radio station offering an Adult Contemporary music format with a broad range of popular music.
9. Golden West submitted that, in operating three radio stations in Moose Jaw, it would benefit from significant synergies in overall planning as well as in accounting, sales, management, production, technical matters and the sharing of on-air staff. Golden West's application is consistent with the Commission's policy on common ownership of broadcasting undertakings, set out in *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998 (the Commercial Radio Policy), which provides that in a market like Moose Jaw served by less than eight commercial English-language radio stations, a licensee may own or control as many as three radio stations in a given language, with a maximum of two radio stations in any one frequency band.
10. With respect to the Canadian content levels to be broadcast on the proposed radio station, Golden West made a commitment that 40% of all musical selections drawn from category 2 (Popular music) aired during each broadcast week, and 40 % of all category 2 musical selections aired between 6:00 a.m. and 6:00 p.m., Monday to Friday, would be devoted to Canadian selections. The proposed levels of Canadian content exceed the minimum levels of 35% required by the Regulations. The applicant stated that it would adhere to this commitment by condition of licence.

11. Golden West made a commitment that all of the proposed radio station's programming would be locally produced. In each broadcast week, the proposed radio station would air approximately seven hours of news and information and an additional seven hours of related surveillance material such as weather and traffic reports. It would also offer a daily program about Moose Jaw secondary schools, Monday to Friday, with a one-hour program devoted to local secondary schools on Saturdays and a weekly musical half-hour program entitled *Made in Saskatchewan*, featuring aspiring artists and musical groups.
12. Golden West made a commitment to devote \$184,800 in direct expenditures to support CTD over the first seven years of operation. Golden West stated that its contributions to CTD would be directed to the following initiatives:
  - \$17,500 annually to the production of CDs for area musical groups;
  - \$5,000 annually to scholarships for area students in arts and music; and
  - \$3,900 annually to the production costs for concerts featuring local musical talent.

#### **Harvard**

13. Harvard currently owns and operates three radio stations in the neighbouring city of Regina, Saskatchewan, namely CKRM, CFWF-FM and CHMX-FM. The applicant proposed a new commercial FM radio station to serve Moose Jaw with an Adult Contemporary music format. The proposed radio station would target an audience aged 18 to 49 years.
14. Harvard made a commitment that 40% of all musical selections drawn from category 2 (Popular music) broadcast during each broadcast week, and 40% of all category 2 musical selections broadcast between 6:00 a.m. and 6:00 p.m., Monday to Friday, would be devoted to Canadian selections. The proposed levels of Canadian content exceed the minimum regulatory requirements. The applicant stated that it would adhere to this commitment by condition of licence.
15. Harvard stated that all of the proposed radio station's programming would be locally produced. In each broadcast week, the proposed radio station would offer approximately 13 hours 25 minutes of spoken word programming, including 5 hours 25 minutes devoted to local and regional news and information. *Variety FM Showcase*, a 60- to 90-minute segment featuring new Canadian artists representing all musical styles with a focus on artists from Moose Jaw and Saskatchewan, would be aired six times daily.
16. Harvard indicated that it would support the CAB's CTD plan at the \$3,000 annual contribution level identified for markets the size of Moose Jaw, and proposed to contribute an additional \$3,000 in direct expenditures on CTD annually, or \$21,000 over seven consecutive years, to be distributed as follows:

- \$1,500 annually to a music scholarship at Briercrest College in Moose Jaw; and
- \$1,500 annually to the Moose Jaw Cultural Centre.

## **Interventions**

17. The Commission received interventions in support of each of the three applications as well as an intervention by the Canadian Independent Record Production Association (CIRPA) commenting on the applications by Golden West and Harvard. In addition, Golden West and Rawlco Radio Ltd. (Rawlco) filed interventions in opposition to Harvard's application. Rawlco is the licensee of CJME, CIZL-FM and CKCK-FM Regina.
18. In its comment, CIRPA stated that it supports "more Canadian content rather than less" and noted that both Golden West and Harvard proposed to offer Canadian content beyond the regulatory minimums. CIRPA also indicated that it supports diversity in ownership and musical formats. However, CIRPA expressed general concern with the lack of CTD funding proposed to be directed to the Foundation to Assist Canadian Talent on Record (FACTOR) by these applicants. In CIRPA's opinion, the best use of CTD contributions is to "direct the funds to FACTOR and utilize the expertise and knowledge available to FACTOR to maximize benefits from these monies."
19. Golden West submitted that Harvard's plan to spend over \$1.3 million to establish a new radio station in the Moose Jaw market was unrealistic given the market's existing capacity. Golden West also expressed concern that the introduction of a new radio station operated by Harvard would have a negative impact on the entire radio industry in Moose Jaw. In particular, Golden West submitted that Harvard would drive down rates, resulting in substantial losses for all parties.
20. Both Golden West and Rawlco contended that Harvard's proposed radio station would provide a quality signal in Regina, which would effectively allow Harvard to operate a third English-language commercial FM radio station in the Regina market in addition to CFWF-FM and CHMX-FM. Golden West pointed out that such a situation would be contrary to the Commission's policy on common ownership of broadcasting undertakings within a single market. Based on its contention that the signal of the proposed radio station would reach Regina, Rawlco expressed concern that approval of Harvard's application would cause a "fundamental change in the competitive balance" in the Regina market and subject the intervener's radio stations to a competitive disadvantage.

*Harvard's replies*

21. In response to the opposing interventions, Harvard maintained that its proposal is “financially achievable.” According to Harvard, its proposed radio station would fill a “gap” in the Moose Jaw market and would not have an undue impact on the incumbent radio stations. Harvard further contended that the Commission’s common ownership policy is not applicable in the present case because Moose Jaw and Regina are separate radio markets.

**Commission’s analysis and determination**

**Quality of the applications**

22. The Commission assessed each applicant’s overall business plan, including the proposed format, Canadian content commitments, the reflection of the community and local programming proposals as well as CTD proposals.
23. The Commission considers that Shattock did not present an adequately developed business plan. In particular, the Commission finds that several of Shattock’s submissions with respect to the programming it proposed to offer were unclear or contradictory. In the Commission’s view, Shattock did not demonstrate that it would be able to implement a viable radio service. The Commission therefore concludes that approval of Shattock’s application would not be in the public interest.
24. The Commission considers that Golden West and Harvard each presented proposals that represented a service that would be of high quality. The Commission is also satisfied that Golden West and Harvard each proposed viable business plans, and that each demonstrated clearly the financial capacity necessary to fulfil its respective business plan.

**Ability of the Moose Jaw market to absorb new radio services**

25. While the Commission’s predisposition generally lies in favour of increased competition and diversity, and the improvements in the overall quality of available services that these promote, it must also ensure that the competitive impact of a new radio station on a market will not impinge unduly on the ability of any existing station to meet its programming responsibilities under the Act.
26. The Moose Jaw market is currently served by two commercial radio stations: CHAB and CILG-FM, both of which are owned and operated by Golden West, an applicant in this proceeding. However, an analysis of the Bureau of Broadcast Measurement (BBM) surveys between 2002 and 2005 shows that most of the radio tuning by listeners over 12 years of age residing in the Moose Jaw market is to radio stations in Regina. According to the BBM surveys, tuning by those listeners to Moose Jaw radio stations increased marginally following the launch of CILG-FM in 2002.

27. With respect to the issue raised in the interventions by Golden West and Rawlco as to whether Moose Jaw and Regina are, in fact, separate markets, the Commission notes that the Regulations define the market of an FM station as the lesser of the station's 3 mV/m contour and the Central Area (as defined by BBM) of the community served by the station. Based on that definition, the Commission is satisfied that the Moose Jaw market and the Regina market are two separate markets.
28. Golden West, the sole radio operator in the Moose Jaw market, enjoyed significant growth in its total revenues following the launch of CILG-FM in 2002. However, despite this revenue growth, Golden West has experienced a steady decline in the combined profit before interest and taxes margin for its Moose Jaw radio stations since 2002.
29. The Commission has analyzed the Moose Jaw radio market and, based on the low level of profitability of the only incumbent radio broadcaster in the market, the decline in population over the last ten years, and the modest projections for growth in the economy in the upcoming years, the Commission concludes that the Moose Jaw market is not able to absorb the introduction of a new broadcaster at this time without having an undue negative impact on the existing radio stations in the market. In the Commission's view, however, granting Golden West a licence to operate a third radio station in Moose Jaw would provide the incumbent radio broadcaster in the market with significant operating synergies while enabling it to repatriate listeners who are currently tuning to out-of-market radio stations in Regina.
30. The Commission notes that Golden West's proposed radio station would offer an alternative music format in the Moose Jaw market. Furthermore, the Commission notes that Golden West made a commitment to broadcast Canadian content levels that exceed the minimum requirements set out in the Regulations. Its proposed radio station would therefore provide enhanced exposure for Canadian music. In addition, Golden West proposed CTD contributions that exceed the minimum requirements for the Moose Jaw market established under the CAB's CTD plan.
31. In light of the above, the Commission **approves** the application by Golden West Broadcasting Ltd. for a broadcasting licence to operate an English-language, commercial FM radio programming undertaking in Moose Jaw at 103.9 MHz (channel 280C1) with an ERP of 100,000 watts. The competing applications by Kevin Shattock and by Harvard Broadcasting Inc. are **denied**.
32. The Commission is imposing **conditions of licence**, as set out in the appendix to this decision, requiring Golden West to adhere to its commitments with respect to Canadian content and CTD. The Commission reminds Golden West that all CTD expenditures must be made in accordance with the Commission's policy on qualifying contributions to CTD, as set out in Appendix 1 to *An FM policy for the nineties*, Public Notice CRTC 1990-111, 17 December 1990.

33. The licence for the new radio station will expire 31 August 2012 and will be subject to the **conditions** set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, as well as to the **conditions** set out in the appendix to this decision.

### **Issuance of the licence**

34. The Department of Industry (the Department) has advised the Commission that, while this application is conditionally technically acceptable, it will only issue a broadcasting certificate when it has determined that the proposed technical parameters will not create any unacceptable interference with aeronautical NAV/COM services.
35. The Commission reminds the applicant that, pursuant to section 22(1) of the Act, no licence may be issued until the Department notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.
36. Furthermore, the licence for this undertaking will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 15 May 2008. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

### **Cultural diversity**

37. In the Commercial Radio Policy, the Commission encouraged broadcasters to reflect the cultural diversity of Canada in its programming and employment practices. The Commission expects Golden West to adhere to its commitment to reflect the cultural diversity of Canada in its programming and employment practices.

### **Employment equity**

38. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages Golden West 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 in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*



## Appendix to Broadcasting Decision CRTC 2006-190

### Conditions of licence

1. The licence will be subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, with the exception of condition number 5.
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986*, in any broadcast week:
  - (a) devote, in that broadcast week, a minimum of 40% of its musical selections from content category 2 to Canadian selections broadcast in their entirety; and
  - (b) devote, between 6:00 a.m. and 6:00 p.m., in the period from Monday to Friday of the same broadcast week, a minimum of 40% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

For the purposes of this condition, the terms “broadcast week”, “Canadian selection,” “content category,” and “musical selection” shall have the same meaning as that set out in the *Radio Regulations, 1986*.

3. The licensee shall make direct expenditures of at least \$184,800 over seven consecutive years on the development and promotion of Canadian talent, as detailed in this decision. Upon commencement of operation, this amount shall be distributed over seven consecutive broadcast years as follows:
  - \$17,500 annually to the production of CDs for area musical groups;
  - \$5,000 annually to scholarships for area students in arts and music; and
  - \$3,900 annually to the production costs for concerts featuring local musical talent.