



Broadcasting Decision CRTC 2009-305

Route reference:

Broadcasting Notice of Public Hearing 2008-14

Ottawa, 26 May 2009

Five Amigos Broadcasting Inc.
Wallaceburg, Ontario

Application 2008-1198-6, received 5 September 2008
Public Hearing in Orillia, Ontario
26 January 2009

English-language FM radio station in Wallaceburg

*The Commission **approves** an application for a broadcasting licence to operate an English-language commercial FM radio station in Wallaceburg, Ontario.*

Introduction

1. The Commission received an application from Five Amigos Broadcasting Inc. (Five Amigos) for a broadcasting licence to operate an English-language commercial FM radio programming undertaking in Wallaceburg, Ontario. The new station would operate at 99.1 MHz (channel 256A) with an average effective radiated power of 570 watts.
2. Five Amigos is owned by Greg Hetherington (25% of the voting shares), Gary Patterson (25% of the voting shares), Gregory Aarssen (17% of the voting shares), Mike Kilby (16.5% of the voting shares) and Max Fantuz (16.5% of the voting shares). It is controlled by its board of directors, pursuant to the terms of the Shareholders' Agreement.
3. The new station would offer an Adult Contemporary music format. It would provide a minimum of 91 hours of local programming per broadcast week, with the remainder consisting of syndicated programming. Further, it would provide a minimum of 12 hours of spoken word programming per broadcast week, of which four hours and 12 minutes would be devoted to news. It would also broadcast information relating to weather, sports, business reports and community events.
4. The Commission received interventions in support of this application, as well as an intervention in opposition from Blackburn Radio Inc. (Blackburn). The interventions and the applicant's reply to the intervention from Blackburn can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

5. After examining the application in light of applicable regulations and policies and taking into account the interventions received and the applicant's reply to the intervention from Blackburn, the Commission considers that the issues to be addressed in its determinations are the following:
 - Can Wallaceburg support and sustain a radio station of its own?
 - Would the proposed service bring value to the Wallaceburg radio market?
 - Would approval of the present application result in an undue negative impact on existing stations in the Chatham radio market?

Can Wallaceburg support and sustain a radio station of its own?

6. Blackburn submitted that Wallaceburg is not able to support and sustain a radio station of its own. Five Amigos, in its reply, cited recent economic developments in Wallaceburg as evidence that this municipality could support its own radio station.
7. The Commission notes that the applicant's proposal, if approved, would constitute the first local commercial FM radio service to serve Wallaceburg. Further, Canadian markets of a size similar to that of Wallaceburg are generally able to support one commercial radio station. The Commission considers that the community of Wallaceburg, and the greater population covered by the applicant's primary broadcast contour, are sufficient to support a new commercial radio station.

Would the proposed service bring value to the Wallaceburg radio market?

8. Blackburn also submitted that the proposed service would not bring any value to the Wallaceburg radio market. In reply, Five Amigos argued that the local focus of its proposed radio station would bring value to listeners in Wallaceburg.
9. The Commission notes that the proposed radio station would provide local service to Wallaceburg and considers that it would introduce a significant amount of local programming into that community. As such, the Commission is of the view that approval of this application would lead to improved radio service for listeners in Wallaceburg.

Would approval of the present application result in an undue negative impact on existing stations in the Chatham radio market?

10. Blackburn questioned the viability of Five Amigos' business and programming plans. Specifically, Blackburn argued that the applicant significantly overstated the advertising revenues that the proposed service would generate and understated the advertising revenues that would be attracted from existing stations. Blackburn submitted that the potential impact of Five Amigos' proposed FM radio station on existing stations in the Chatham radio market would be greater than estimated by the applicant, given the

limited retail opportunities in Wallaceburg. Further, it characterized the potential impact as quite significant given the limited amount of revenues that it (Blackburn) is already realizing in the area in and around Wallaceburg.

11. In its reply to Blackburn, Five Amigos submitted that its proposed station is economically viable. It also maintained that the Wallaceburg market is separate from that of Chatham.
12. The town of Wallaceburg (population 10,703, 2006 Census) is located about 25 kilometres north of the city of Chatham, and lies within the Chatham-Kent Census Agglomeration (population 108,589, 2006 Census). It is considered part of the Chatham-Kent Bureau of Broadcast Measurement (BBM) defined market and accounts for approximately 10% of the area's population.
13. The Commission notes Five Amigos' projection that its proposed station would generate advertising revenues of \$451,000 in Year 1, increasing to \$911,000 in Year 7, as well as the applicant's estimate that 9.5% (\$54,000) of the Year 2 revenues of the proposed station would be generated at the expense of the existing Chatham stations.
14. Based upon the limited area that would be served by Five Amigos' proposed station relative to the size of the Chatham radio market, the Commission considers that the proposed station would not attract a significant amount of advertising revenue from the Chatham stations. Accordingly, the Commission is of the view that approval of Five Amigos' application would not result in an undue negative impact on the radio stations currently operating in Chatham.

Conclusion

15. In the light of all of the above, the Commission **approves** the application by Five Amigos Broadcasting Inc. for a broadcasting licence to operate an English-language commercial FM radio programming undertaking in Wallaceburg, Ontario. The terms and **conditions of licence** are set out in the appendix to this decision.
16. The Commission requires the applicant to file, within 30 days of the date of this decision, an executed copy of the Shareholders' Agreement.

Canadian content development

17. The Commission reminds the applicant that it must adhere to the requirements relating to contributions to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time. The Commission notes that Five Amigos indicated that, in addition to the required basic annual contributions, it would, by condition of licence, contribute a total of \$14,000 to CCD over seven consecutive broadcast years (\$2,000 per broadcast year), upon commencement of operations. Of this amount, 30% would be devoted to FACTOR or MUSICACTION, with the remainder to be directed in equal proportions to the Wallaceburg Antique Motor and Boat Outing

(WAMBO), in order to support the talent contest promoting and producing local music and local music artists, and to the Kiwanis Music Festival.

18. The Commission reminds the applicant that any development initiatives that have not been allocated to specific parties by condition of licence must be allocated to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists. Parties and initiatives eligible for CCD funding are identified in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

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 2009-305

Terms, conditions of licence and encouragement

Terms

Issuance of the broadcasting licence to operate an English-language commercial FM radio programming undertaking in Wallaceburg, Ontario

The licence will expire 31 August 2015.

The station will operate at 99.1 MHz (channel 256A) with an average effective radiated power of 570 watts.

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.

The Commission reminds the applicant that, pursuant to section 22(1) of the *Broadcasting 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.

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 26 May 2011. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this date.

Conditions of licence

1. The licence will be subject to the conditions set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.
2. In addition to the required basic annual contribution to Canadian content development, set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time, the licensee shall, upon commencement of operations, make an annual contribution of \$2,000 (\$14,000 over seven consecutive broadcast years) to the promotion and development of Canadian content. Of this amount, no less than 20% shall be allocated to FACTOR and/or MUSICACTION. The remainder shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

Encouragement

Employment equity

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.