



## Broadcasting Decision CRTC 2011-580

PDF version

Route reference: 2010-928

Ottawa, 9 September 2011

**Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner), carrying on business as Jim Pattison Broadcast Group Limited Partnership**

**Vancouver Co-operative Radio**  
Vancouver, British Columbia

*Applications 2010-1088-4 and 2010-1095-9, received 2 July 2010 and 30 June 2010*

### **CKPK-FM and CFRO-FM Vancouver – Licence amendments and technical changes**

*The Commission **approves** the applications by Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner), carrying on business as Jim Pattison Broadcast Group Limited Partnership, and Vancouver Co-operative Radio to amend the broadcasting licences for the commercial radio station CKPK-FM and the community radio station CFRO-FM Vancouver by exchanging their frequencies and changing their authorized contours.*

#### **Introduction**

1. The Commission received applications by Jim Pattison Broadcast Group Limited Partnership (Pattison),<sup>1</sup> licensee of the commercial radio programming undertaking CKPK-FM Vancouver, and Vancouver Co-operative Radio (Co-op Radio), licensee of the community radio programming undertaking CFRO-FM Vancouver, to amend the broadcasting licences for their radio programming undertakings by exchanging their frequencies and changing their authorized contours.
2. More specifically, the current technical parameters for each station would be revised as follows:

---

<sup>1</sup> Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner), carrying on business as Jim Pattison Broadcast Group Limited Partnership.

	Pattison		Co-op Radio	
	Current	Proposed	Current	Proposed
<b>Frequency (MHz)</b>	100.5 (channel 263C)	102.7 (channel 274C)	102.7 (channel 274B)	100.5 (channel 263C)
<b>Effective height of antenna above average terrain (metres)</b>	570.7	590.4	306	570.7
<b>Average effective radiated power (ERP) (watts)</b>	2,800 (maximum ERP 11,000)	51,000 (maximum ERP 100,000)	5,500 (maximum ERP 5,500)	2,800 (maximum ERP 11,000)

3. As part of the applications, Co-op Radio also proposed to change the antenna site for CFRO-FM to co-locate with the existing CKPK-FM antenna, while Pattison committed to providing technical, financial and marketing support to the community station amounting to \$1,437,000 over a period of five years, including:
  - rent payment for the new transmitter site (\$192,000);
  - costs for technical brief, Commission application, new transmitter and maintenance (\$320,000);
  - an annual payment of \$125,000 (\$625,000 over five years); and
  - outdoor advertising for the new frequency (\$300,000).
  
4. The licensees stated that this proposal would allow CKPK-FM to make a more efficient and effective use of the 102.7 MHz frequency and to be on a more level playing field in the Vancouver commercial radio market, while ensuring the survival of the community station CFRO-FM. The applicants submitted that the applications were therefore in the public interest because of the resulting effective use of the spectrum within the Canadian broadcasting system and survival and stability of a community radio station serving marginal communities in Vancouver.
  
5. The Commission received interventions in support of the applications. The Commission also received interventions commenting on the applications by CJSW Radio and Gabriola Radio Society and opposing interventions by Radio Malaspina Society and certain individuals. The interventions and the applicants' replies can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Commission's analysis and determinations**

6. After considering the applications, the interventions and the applicants' replies in light of its policies and regulations, the Commission finds that the issues to be examined in its determinations are the following:
  - Does the proposed exchange of frequencies affect the integrity of the licensing process relating to CKPK-FM?

- Does the proposed exchange of frequencies raise issues with respect to the Commission's Common Ownership Policy?
  - Is there an economic need to support the proposed exchange of frequencies?
  - Would the proposed exchange of frequencies result in a better use of spectrum?
  - Would approval of the applications be generally consistent with the Commission's past practice?
7. Regarding the concern raised in some of the opposing interventions concerning the apparent lack of transparency of CFRO-FM's board of directors in its negotiations with Pattison, the Commission notes that a properly elected board of directors is responsible for the management and direction of the corporation it oversees. As such and given that the Commission does not typically interfere with a station's internal management decisions, the Commission has not pursued this issue in its analysis.

**Does the proposed exchange of frequencies affect the integrity of the licensing process relating to CKPK-FM?**

8. Following a competitive process, in Broadcasting Decision 2008-117 the Commission approved an application by Pattison for a new commercial FM station in Vancouver at 100.5 MHz to replace its AM station CKBD. In that decision, the Commission stated the following:

The Commission notes that Pattison is the only applicant that can operate at 100.5 MHz because that frequency is adjacent to 100.3 MHz, which is used by Pattison's station CKKQ-FM Victoria. Accordingly, the Commission is satisfied that approval of Pattison's proposal represents an efficient use of a scarce frequency.

9. In its current application, Pattison is proposing to exchange the above-noted frequency. Given the preceding and since Pattison was the only applicant to apply for the 100.5 MHz frequency as part of the 2008 Vancouver public hearing and its application was not technically mutually exclusive with other applications, the Commission is of the view that approval of such an application would not undermine the integrity of the licensing process. The Commission also notes that CFRO-FM is already operating on a protected frequency and that the exchange would not represent a change in status for this station.

**Does the proposed exchange of frequencies raise issues with respect to the Commission's Common Ownership Policy?**

10. As set out in Public Notice 1998-41, the Commission's Common Ownership Policy stipulates that in markets with less than eight commercial stations operating in a given language, a person may own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band. In markets

with eight or more commercial stations operating in a given language, a person may own or control as many as two AM and two FM stations in that language.

11. In Broadcasting Information Bulletin 2010-341, the Commission established guidelines for the application of the Common Ownership Policy to determine the number of stations within a market that will be considered commonly owned if a licensee owns stations in an adjacent market. The guidelines specify the following:

Where the population in the overlapping area includes less than 5% of the population of the market, the station will generally be excluded when assessing the number of stations operated by that person in a particular language in that market.

In the case of an application where the population in the overlapping area constitutes 5% or more, but less than 15% of that market, the Commission will examine the application, giving consideration to the following factors:

- whether approval of the application might affect competitive balance in the market and
- whether, because of a large discrepancy in the size of the markets served by the relevant stations, approval would be likely to affect the orientation of news and public affairs coverage.

12. Following an analysis of the 3 mV/m contour proposed by Pattison for CKPK-FM, the Commission identified an overlap between the proposed CKPK-FM contour and those of four Pattison stations in the Nanaimo (CHWF-FM and CKWV-FM) and Victoria (CKKQ-FM and CJZN-FM) radio markets. Specifically, the overlap with the Nanaimo market stations includes just over 9% of the population of that market, while the overlap with the Victoria market stations includes 2.8% of the population of that market.

13. In response to questioning by the Commission regarding the overlap with the Nanaimo market, Pattison indicated that there would be no impact on the competitive balance in Nanaimo as CKPK-FM would not and could not be marketed in Nanaimo under the proposed contours. According to Pattison, there are over 50 out-of-market stations that reach Nanaimo, no Vancouver-based radio station would market its service in Nanaimo and very few if any Nanaimo-based advertisers would buy time on a Vancouver radio station. Pattison further indicated that to be successful CKPK-FM must focus all of its attention on the highly competitive Vancouver market it is licensed to serve and that the proposed application will in no way impact the orientation of the station's news and public affairs coverage.

14. The Commission notes that Vancouver and Nanaimo are separated by a fifty-kilometre stretch of the Strait of Georgia and that a 1 hour and 40 minute ferry ride is required to get from one city to the other. As a result, the Commission generally agrees with Pattison that the Vancouver and Nanaimo radio markets are largely independent of each other. Given the significant discrepancy in size between

these markets and the fact that CKPK-FM operates in the larger of the two markets, the Commission considers it highly unlikely that a considerable amount of advertising would be generated by CKPK-FM from the Nanaimo area as a result of the approval of the proposed frequency exchange and revised contours. Further, the Commission notes that Pattison's other Vancouver station, CJJR-FM, presents a 3 mV/m coverage contour similar to that proposed for CKPK-FM and that this contour also overlaps the contours of the above-mentioned Pattison stations in Nanaimo and Victoria.

15. Given the above, the Commission considers that approval of the applications would not affect the competitive balance of the Nanaimo market or the orientation of the programming of CKPK-FM. Accordingly, it is of the view that an exception to the Common Ownership Policy is warranted in this case.

**Is there an economic need to support the proposed exchange of frequencies?**

16. Co-op Radio stated that the proposal relating to the frequency exchange is the only foreseeable way in which it can continue to broadcast. Specifically, it noted that after 35 years on air, its transmission equipment is failing and it does not have the resources necessary to replace the equipment. Co-op Radio also indicated that it would likely soon require a new transmission site as its current lease with Corus expires in 2012. In this regard, Co-op Radio expressed concern that it would soon face rising lease costs as two years ago Corus attempted to raise the yearly site fee from \$5,000 to \$45,000 per year, an amount deemed unsustainable by the licensee.
17. For its part, Pattison indicated that the proposed frequency exchange would allow CKPK-FM, which began broadcasting on the FM band in November 2008, to improve its signal strength, thereby enabling it to compete on a more level playing field in the Vancouver commercial radio market.
18. Given that CKPK-FM has only been operating on the FM band and under its current Adult Album Alternative format since November 2008, the Commission considers it too early to assess if there is a significant financial need on the part of CKPK-FM for the proposed frequency exchange. However, the Commission notes that CFRO-FM is a listener-supported community radio service with very modest revenues that essentially operates on a break-even basis. The Commission also notes the challenges faced by CFRO-FM under its mandate to serve marginal communities, especially Vancouver's Downtown Eastside, with the help of hundreds of volunteers, a fact noted by the National Campus and Community Radio Association and other interveners in support of the proposal.
19. In light of the above, the Commission concludes that there is an economic need on the part of CFRO-FM to support the proposed frequency exchange.

**Would the proposed exchange of frequencies result in a better use of spectrum?**

20. The opposing interventions and comments received raised the concern that due to the limited capacity of the proposed frequency for CFRO-FM, there will be no opportunity for this station to increase its power in the future. These interveners also

submitted that approval of the applications would not result in a long-term benefit to the community radio spectrum in Vancouver. In this respect, they noted that the viability of CFRO-FM is not assured over the long term with this proposal as Pattison only guaranteed financial and technical support for five years. These interveners also raised concerns over the fact that approval of the applications would create a precedent in the way that money would influence how spectrum is managed in Canada.

21. In reply, Co-op Radio noted that the new signal would effectively provide the same or better coverage and a higher quality signal for the majority of its current listeners. Co-op Radio further noted that it would never be in a position to broadcast at higher power for financial reasons and that obtaining higher power has never been a priority for CFRO-FM since it is focused on serving the local community and does not compete directly with commercial stations. Co-op Radio also indicated that the station would work with its membership to develop plans for the use of the money and resources it would receive from Pattison to ensure future investment in the station. Finally, it stated that the station intends to invest in its Internet presence to ensure that listeners who are not able to receive the signal by radio are able to access the programming via the Internet.
22. The Commission notes that approval of both of the applications would result in an increase in coverage and population served and no loss of service to the communities currently served by the stations. Specifically, the estimated increase in population served as provided by the applicants would be as follows:

	Co-op Radio		Pattison	
	CFRO-FM		CKPK-FM	
<b>Contour</b>	3.0 mV/m	0.5 mV/m	3.0 mV/m	0.5 mV/m
<b>Actual</b>	1,948,298	2,326,734	2,103,336	2,342,800
<b>Proposed</b>	2,103,336	2,342,800	2,322,750	2,908,400

23. Accordingly, for these reasons as well as those outlined by the licensees and elsewhere in this decision, including the fact that Pattison is proposing to exchange a frequency that no other broadcaster can use, to make more efficient use of 102.7 MHz to compete in the Vancouver commercial radio market and to provide financial and technical support to ensure the survival of CFRO-FM for at least five years, the Commission concludes that the proposal would result in a better use of spectrum.

**Would approval of the applications be generally consistent with the Commission's past practice?**

24. The Commission notes that there are currently no regulations or policies specifically addressing the exchange of frequencies. When presented with such applications, the Commission analyzes each application on a case-by-case basis. This analysis is informed by precedent.

25. In this respect, the Commission notes that it has approved applications for frequency exchanges in the past. Specifically, in Decisions 2000-214 and 2000-215, the Commission approved applications for an exchange of frequencies between the commercial radio station CJVI Victoria, owned by Rogers Broadcasting Limited (Rogers), and the instructional campus radio station CKMO-FM Victoria, owned by CKMO Radio Society (CKMO Radio). Rogers committed to spend \$400,000 over 10 years to operate and maintain the AM transmission facilities on behalf of CKMO Radio.
26. Subsequently, in Broadcasting Decisions 2010-297 and 2010-298, the Commission approved a frequency exchange involving CBU-1-FM Abbotsford, a transmitter of the Canadian Broadcasting Corporation station CBU Vancouver, and the community-based campus radio station CIVL-FM Abbotsford. No monetary compensation was involved in this case.
27. The Commission notes that both frequency exchanges described above were based on technical needs, either to find an FM frequency for a conversion from the AM band or to enable a station to limit interference with a second adjacent frequency. In the present case, the frequency exchange is based on the non-viable situation of CFRO-FM and its need for immediate technical and financial support to survive, as well as on the more efficient use of 102.7 MHz to enable the Pattison station to compete on a more level playing field in the Vancouver commercial radio market. In this respect, the Commission recognizes that the funding to be directed to Co-op Radio, while significant, is reflective of the costs associated with the new transmitting facilities in Vancouver and the corresponding costs involved in the maintenance of the facilities and ensuring CFRO-FM's survival. In the previous and the present frequency exchange proposals, the Commission considered that approval of the applications represented the best use of the frequencies in their respective markets.
28. For the reasons outlined above and elsewhere in this decision, the Commission considers that approval of the current applications would be generally consistent with its past practice.

## **Conclusion**

29. In light of all of the above, the Commission **approves** the applications by Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner), carrying on business as Jim Pattison Broadcast Group Limited Partnership, and Vancouver Co-operative Radio to amend the broadcasting licences for the commercial radio programming undertaking CKPK-FM and the community radio programming undertaking CFRO-FM Vancouver by exchanging their frequencies and changing their authorized contours. The revised technical parameters for both stations will be those proposed in paragraph 2 of this decision.
30. The Department of Industry (the Department) has advised the Commission that while these applications are conditionally technically acceptable, it will only issue broadcasting certificates when it has determined that the proposed technical

parameters will not create any unacceptable interference with aeronautical NAV/COM services.

31. The Commission reminds the licensees that pursuant to section 22(1) of the *Broadcasting Act*, this authority will only be effective when the Department notifies the Commission that its technical requirements have been met and that broadcasting certificates will be issued.
32. The new parameters must be implemented 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 9 September 2013. In order to ensure that such a request is processed in a timely manner, it should be submitted in writing at least 60 days before that date.

Secretary General

#### **Related documents**

- *Revised guidelines for the application of the Common Ownership Policy for Radio*, Broadcasting Information Bulletin CRTC 2010-341, 4 June 2010
- *CBU Vancouver and its transmitter CBU-1-FM Abbotsford – Licence amendment and technical change*, Broadcasting Decision CRTC 2010-298, 21 May 2010
- *CIVL-FM Abbotsford – Licence amendment*, Broadcasting Decision CRTC 2010-297, 21 May 2010
- *Licensing of new radio stations to serve the Vancouver radio market*, Broadcasting Decision CRTC 2008-117, 30 May 2008
- *Conversion of AM station CJVI to FM*, Decision CRTC 2000-215, 30 June 2000
- *New instructional campus radio station*, Decision CRTC 2000-214, 30 June 2000
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998

*\*This decision is to be appended to each licence.*