



## Broadcasting Decision CRTC 2011-85

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Route reference: 2010-464

Ottawa, 10 February 2011

**1486781 Ontario Limited**  
Brantford, Ontario

*Applications 2010-0602-3 and 2010-0618-0, received 12 and 14 April 2010*

### **CFWC-FM Brantford – Change in effective control and amendments to conditions of licence**

*The Commission **denies** the applications by 1486781 Ontario Limited:*

- *for authority to effect a change to its effective control through the transfer of all of its issued and outstanding shares from its sole shareholder, Anthony Schleifer, to Durham Radio Inc.; and*
- *to delete conditions of licence related to music from subcategory 35 (non-classic religious), Canadian selections from category 3 (Special interest music), and the use of hit material.*

#### **The applications**

1. The Commission received two applications by 1486781 Ontario Limited (1486781), licensee of the English-language specialty FM radio programming undertaking CFWC-FM Brantford.
2. In one application, 1486781 applied for authority to effect a change to its effective control through the transfer of all its issued and outstanding shares from its sole shareholder Anthony Schleifer to Durham Radio Inc. (Durham Radio), pursuant to section 11(4) of the *Radio Regulations, 1986*.
3. Durham Radio is controlled by Douglas Kirk, the majority shareholder. Following this transaction, Durham Radio would become the sole owner of 1486781 and exercise control of 1486781.
4. The purchase price for the acquired shares set out in the Share Purchase Agreement is \$265,000.
5. The applicant did not propose any tangible benefits because the station has been unprofitable for the past several years.

6. The applicant indicated that the proposed transaction set out above was contingent on approval of the second application, which is to delete the following conditions of licence for CFWC-FM:
  - A minimum of 95% of all music selections broadcast during each broadcast week shall be devoted to selections drawn from subcategory 35 (Non-classic religious).
  - The licensee shall ensure that a minimum of 15% of musical selections from category 3 (Special interest music) broadcast during each broadcast week are Canadian selections.
  - The licensee shall broadcast, in any broadcast week, no more than 20% hit material as defined in *Revised Policy on the Use of Hits by English-language FM radio stations*, Public Notice CRTC 1997-42, 23 April 1997.
7. The applicant indicated that approval of this application would permit CFWC-FM to replace its current Christian music format with a broad-based rock format.

### **Interventions**

8. The Commission received interventions opposing and commenting on the applications. The complete record of this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
9. Most of the interventions were from individuals who noted that CFWC-FM is the only station offering Christian music while a number of rock stations are available to Brantford listeners. The interveners were concerned that approval of the applications would result in a decrease in the diversity of programming available.
10. Several parties already active in Christian broadcasting indicated that they had been unaware that CFWC-FM was for sale and would be interested in purchasing the station and maintaining its Christian music format.
11. Evanov Communications Inc. (Evanov) opposed the applications. Evanov operates CKPC and CKPC-FM, the two other two private commercial stations serving Brantford. Evanov noted that it had acquired the two stations in 2009 on the basis that they were the only mainstream FM stations serving the market. Evanov submitted that approval of the applications would have a negative financial impact on CKPC and CKPC-FM. It argued that Brantford is not an economically robust market and that Brantford stations must compete with stations in much larger surrounding markets such as Hamilton and Kitchener.

### **Applicant's reply**

12. In reply to comments by those concerned about the loss of the Christian music format, the applicant submitted that Christian programming would continue to be available in the market from CJYE Oakville.

13. With respect to those interested in purchasing CFWC-FM and keeping the format, the applicant submitted that it had received no reasonable offers in this regard. It argued that approval of the applications would ensure the long-term viability of the station.
14. In response to Evanov's intervention, the applicant argued that Brantford was a healthy market that was underperforming because there were too few radio stations. The applicant added that the proposed format would not duplicate what is currently available and that it would repatriate listeners to the market.

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

### **Impact of a format change on the Evanov stations**

15. The Commission acknowledges that the deletion of conditions of licence to allow CFWC-FM to adopt a more mainstream format brings with it the potential for CFWC-FM to improve its financial state and to repatriate some listeners who currently tune to out-of-town stations. However, the Commission considers that the large size of the markets adjacent to Brantford (i.e., Hamilton and Kitchener), and the fact that their trading areas may extend into Brantford, make radio stations from those adjacent markets relevant tuning options for Brantford residents. Given this competitive situation, the Commission is concerned that CFWC-FM would take revenues that now flow to CKPC and CKPC-FM if the application to delete programming conditions of licence were approved, further weakening the financial performance of those stations.
16. The Commission further notes that Evanov has only operated CKPC and CKPC-FM since late 2009. Evanov has therefore had little time to implement its strategy to improve the performance of the stations, and the entrance of a new competitor at this time may hinder Evanov's efforts.

### **The application for a format change in light of the original licensing process for CFWC-FM**

17. CFWC-FM was originally licensed as a low-power station in Decision 2001-642. Telephone City Broadcast Limited, then licensee of CKPC and CKPC-FM, intervened against the application arguing that the proposed station would have a negative impact on CKPC and CKPC-FM. In approving the application, Commission noted that both CKPC and CKPC-FM were regular, high power stations that operated in formats that appeal to a mass audience while the new station would focus on serving a niche audience. The Commission was therefore satisfied that the new station would expand the diversity of radio services available in the Brantford market without an undue negative impact on existing licensed commercial stations in that market.
18. Later, in Broadcasting Decision 2004-187, the Commission approved an application to change CFWC-FM's frequency and to increase the effective radiated power from 50 to 250 watts, giving the station a protected status. The change of frequency to 93.9 MHz was necessary in light of the Commission's

decision to award 99.5 MHz to a new Kitchener station. However, the station was still required, by its conditions of licence, to maintain a Christian music format.

19. Should the Commission approve the application for a format change, CFWC-FM would complete a transition, since its original licensing, from an unprotected low-power FM station offering a Christian music format to a mainstream station operating on a protected frequency. Further, with the approval of the application for a change of control, Durham Radio would acquire a mainstream commercial FM station in an urban market without having gone through a competitive process.
20. The Commission is of the view that the licensing of a mainstream commercial radio station in a market such as Brantford should be the subject of a competitive process.

## **Conclusion**

21. In light of the above, and given that the change in effective control is contingent on approval of the application for changes to the programming conditions of licence, the Commission **denies** the applications by 1486781 Ontario Limited:
  - for authority to effect a change to its effective control through the transfer of all of its issued and outstanding shares from its sole shareholder, Anthony Schleifer, to Durham Radio Inc.; and
  - to delete conditions of licence related to music from subcategory 35 (non-classic religious), Canadian selections from category 3 (Special interest music), and the use of hit material.

Secretary General

## **Related documents**

- *CFWC-FM Brantford – Technical change*, Broadcasting Decision CRTC 2004-187, 20 May 2004
- *New Christian FM radio station*, Decision CRTC 2001-642, 11 October 2001