



Broadcasting Decision CRTC 2015-162

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Reference: Part 1 application posted on 22 July 2014

Ottawa, 27 April 2015

MZ Media Inc.
Toronto, Ontario

Application 2014-0647-1

CFZM Toronto – New nested FM transmitter in Toronto

*The Commission **approves** the application by MZ Media Inc. to operate a nested FM transmitter in downtown Toronto to rebroadcast the programming of its English-language commercial AM radio station CFZM Toronto. In the Commission's view, by implementing this authorization, the licensee will enable listeners in the downtown core of Toronto to receive an improved signal with FM audio quality.*

A dissenting opinion by Commissioner Raj Shoan is attached to this decision.

Application

1. MZ Media Inc. (MZ Media) filed an application to operate a nested FM transmitter¹ in downtown Toronto, Ontario, in order to rebroadcast the programming of its English-language commercial AM radio station CFZM Toronto.
2. MZ Media is also the licensee of the English-language specialty radio stations CFMZ-FM Toronto, CFMX-FM Cobourg and CFMO-FM Collingwood.
3. The transmitter would operate at 96.7 MHz (channel 244) with an average effective radiated power (ERP) of 22.4 watts (maximum ERP of 82 watts with an effective height of antenna above average terrain of 280.1 metres).²
4. MZ Media stated that the proposed transmitter is necessary to improve the reception quality of CFZM's signal in downtown Toronto. The licensee indicated that the station's signal is severely impaired by electrical interference from streetcars, and from blockage from high-rise buildings, bridges, viaducts and portable wireless electronic devices, including cell phones that interfere with AM signals within

¹ A nested transmitter is a transmitter located within the coverage contours of the original station to supplement coverage to an area experiencing reduced signal strength.

² MZ Media originally proposed an average ERP of 27.3 watts (maximum ERP of 100 watts) for the transmitter. However, the licensee revised the technical parameters of the proposed transmitter in order to comply with the Department of Industry's protection requirements towards existing incumbent stations.

buildings. It provided engineering studies and listener testimony as evidence that reception is unreliable and inadequate in downtown Toronto.

5. MZ Media further stated that there would be no changes to CFZM's programming, and that the operation of the proposed transmitter would not have a negative impact on radio stations currently operating in the market.
6. Finally, the licensee indicated that severe degradation of CFZM's coverage in Toronto's core has eroded the station's revenues. It stated that should the Commission deny the application, the station would no longer be viable.
7. The Commission received an intervention in opposition to this application from an individual, to which the licensee replied. The public record for this application is available on the Commission's website at www.crtc.gc.ca or by using the application number provided above.

Issues

8. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
 - whether the licensee has demonstrated a compelling technical or economic need for the proposed transmitter;
 - whether the licensee's proposal constitutes an appropriate technical solution;
 - whether the proposed transmitter represents an appropriate use of radio spectrum; and
 - whether approval of the application would have an undue financial impact on incumbent radio stations.

Compelling technical or economic need

9. When a licensee of a radio station files an application for a technical change, including the addition of a transmitter, the Commission expects the licensee to present compelling technical or economic evidence that the existing technical parameters are not adequate to provide the service as originally proposed. Accordingly, the Commission has examined both the technical and economic need for the proposed transmitter.

Technical need

10. To demonstrate technical need, MZ Media provided a field strength measurement, audio recordings taken in various locations in downtown Toronto, and the results of listener reception surveys regarding the station's signal reception problems. It also included older technical studies conducted by the Department of Industry

(the Department) in February 1997 and by the Canadian Broadcasting Corporation (CBC) in March 1995 to assess the signal quality of CBL Toronto, the station that had previously operated on CFZM's current frequency of 740 kHz, at the same power and from the same transmission site.³ The CBC study concluded that the CBL radio coverage was inadequate. The study by the Department, which covered six radio stations in Toronto (four AM and two FM), concluded in part that CBL had "a fair signal" in areas where the signals of the other stations were good to excellent.

11. To indicate that CFZM's signal reception continued to deteriorate in Toronto, MZ Media compared its field strength measurements with points that were part of the Department's 1997 technical study. This comparison showed that the strongest decline in signal reception was in the downtown core. In addition, MZ Media provided a map with field strength measurements showing signal degradation in downtown Toronto.
12. In light of the above, the Commission finds that MZ Media has demonstrated a compelling technical need to mitigate reception issues in Toronto's downtown area.

Economic need

13. MZ Media stated that CFZM's revenues are eroding due to the significant signal issues within the core of the Toronto radio market. According to financial projections that it provided to the Commission, operation of the proposed transmitter would allow CFZM to reverse the decline in total revenues. The licensee submitted that should its request be denied, the station's revenues would continue to decline, ultimately leading to a situation where the station is no longer viable.
14. In light of CFZM's financial performance, the licensee's financial projections for the station, and the risk that the station would not be viable without the requested technical change, the Commission finds that MZ Media has demonstrated a compelling economic need for the proposed transmitter.

Appropriateness of the proposed technical solution

15. In its application, MZ Media proposed the "nested" transmitter as the only option to resolve CFZM's signal reception problems. As this transmitter would operate on frequency 96.7 MHz, it would be second adjacent to MZ Media's own station CFMZ-FM, which operates on frequency 96.3 MHz. The licensee indicated that the proposed transmitter would also be co-located in downtown Toronto with CFMZ-FM, which would serve to minimize interference problems between the second adjacent transmitters.

³ Following CBL's conversion to the FM band, approved by the Commission in Decision 97-362, CFZM was awarded the frequency 740 kHz in Decision 2000-205.

Intervention

16. The individual intervener submitted that the use of frequency 96.7 MHz for the new transmitter may be a “bad idea” given that the radio station CKHC-FM Toronto, a campus radio station licensed to Humber Communications Community Corporation, is currently transmitting on the first adjacent frequency 96.9 MHz. The intervener argued that due to the overcrowded FM broadcast band in Toronto, there are “virtually hardly any open frequencies available,” and stated that the licensee should instead use either of frequencies 91.5 MHz or 101.7 MHz for the proposed transmitter.

Reply

17. In reply, MZ Media indicated that the use of the proposed frequency complies with the requirements of the Department, and that the proposed technical parameters protect CKHC-FM in accordance with those requirements.

18. In regard to the options presented by the intervener, MZ Media cited an engineering study by its consulting engineer, which indicated that the proposed frequency is the only viable frequency that can be used for the proposed transmitter. Further, the licensee described how the frequencies proposed by the intervener could not be used, mainly due to protection requirements to incumbent second adjacent radio stations.

Commission’s analysis

19. The Commission generally authorizes the addition of a rebroadcasting transmitter to correct clearly demonstrated technical problems within a radio station’s licensed service area.

20. In the present case, the primary service contour of the proposed transmitter would encompass the area where signal reception problems are most frequent (i.e., downtown Toronto). Further, the service area of the proposed transmitter would be contained within the very large primary service contour for CFZM, which encompasses, in addition to the Greater Toronto Area, a large part of the Golden Horseshoe.

21. Further, the Commission notes that MZ Media has maximized the proposed technical parameters for the frequency 96.7 MHz, especially in consideration of the protection requirements for the incumbent co-channel stations CHYM-FM Kitchener and CJWV-FM Peterborough, and the first adjacent radio station CKHC-FM.

22. In the Commission’s view, given the protection criteria to adjacent stations, MZ Media would not be able to increase, in a noticeable manner, the service footprint of the proposed FM rebroadcasting transmitter over CFZM in the foreseeable future.

23. In light of the above, the Commission finds that the technical solution proposed by MZ Media is appropriate to address CFZM’s signal problems.

Appropriate use of spectrum

24. The Commission is mindful of the scarcity of spectrum in the Toronto radio market, and notes that there are no FM allotments available in that city. Accordingly, in addition to the evidence provided as proof of technical or economic need, the Commission has considered whether the proposal would represent an appropriate use of the spectrum for that radio market.
25. The proposed frequency 96.7 MHz is second adjacent to that on which CFMZ-FM operates, 96.3 MHz. Pursuant to the rules and procedures established by the Department,⁴ the use of frequency 96.7 MHz requires consent from CFMZ-FM. This requirement may preclude the use of frequency 96.7 MHz by any other party. Consequently, the Commission is of the view that its use would not have an impact on the availability of frequencies in Toronto. Further, given the protection requirements on incumbent stations in adjacent markets, the licensee's use of that frequency, as proposed, would not have a significant impact on the availability of frequencies outside Toronto.
26. In light of the above, the Commission finds that MZ Media's proposal represents an appropriate use of spectrum.

Impact on incumbent radio stations

27. The Toronto radio market, the largest radio market in Canada, posted a cumulative profit before interest and taxes (PBIT) of \$87 million in 2013. Based on the licensee's financial projections, operating the proposed transmitter would allow CFZM to generate a relatively limited increase in revenues over three years when compared to the total revenues generated in the entire Toronto radio market in 2013.
28. Further, given that the service contour of the proposed transmitter would lie within the primary contour of CFZM, the operation of that transmitter would not modify that station's market or the size of the population served by the station.
29. Finally, the Commission notes that no licensee of an incumbent radio station in the Toronto market submitted an intervention in opposition to the present application.
30. In light of the above, the Commission finds that approval of the proposed transmitter would have little to no impact on incumbent radio stations in the Toronto radio market.

Commission's decision

31. In light of all of the above, the Commission **approves** the application by MZ Media Inc. to amend the broadcasting licence for the English-language commercial AM radio programming undertaking CFZM Toronto, Ontario, in order to

⁴ See *BPR-3: Application Procedures and Rules for FM Broadcasting Undertakings*.

add a nested FM transmitter in Toronto to rebroadcast the programming of CFZM. In the Commission's view, by implementing this authorization, the licensee will enable listeners in the downtown core of Toronto to receive an improved signal with FM audio quality.

32. The Commission reminds the licensee 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 a broadcasting certificate will be issued.
33. The transmitter 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 **27 April 2017**. 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.

New FM presence in the Toronto radio market

34. The Commission's Common Ownership Policy for radio establishes that in markets with eight or more commercial radio stations operating in a given language, a person may be permitted to own or control as many as two AM and two FM stations in the same language. The Commission first set out this approach in Public Notice 1998-41, and maintained this approach in its 2006 Commercial Radio Policy (see Broadcasting Public Notice 2006-158) and in its policy on diversity of voices (Broadcasting Public Notice 2008-4), as clarified in Broadcasting Information Bulletin 2010-341.
35. The Commission has generally approved applications for nested FM transmitters to be located within the coverage contours of AM radio stations where such a transmitter would supplement coverage to areas experiencing reduced signal quality due to any number of sources of interference found in urban environments. It has further approved applications for nested FM transmitters in locations where spectrum scarcity was not an issue and in instances where such approval would be consistent with the Common Ownership Policy.
36. The Commission has denied applications for nested FM transmitters where the transmitter's reach would have offered coverage to the majority of the AM station's coverage area, or would have extended coverage beyond that area, and where spectrum scarcity was an issue. The Commission has also denied such applications in cases where it was determined that the nested FM transmitter would undermine the Common Ownership Policy by adversely affecting competitive balance and diversity in the market.
37. As noted above, MZ Media currently owns and operates two radio stations in Toronto, the AM station CFZM and the FM station CFMZ-FM. Even with its limited technical parameters, the operation of the new nested FM transmitter will grant CFZM coverage of a sizeable portion of Toronto's population within that transmitter's primary 3 mV/m contour (532,715 persons) and secondary 0.5 mV/m

contour (2,003,852 persons), and will constitute an FM presence in the Toronto radio market equivalent in practice to an FM station. Consequently, MZ Media will own and control one AM radio station and two FM radio stations in that market. Although approval of the present application does not raise issues with respect to the Common Ownership Policy, it does give MZ Media the maximum allowable FM radio presence in the Toronto radio market without an exception to that policy.

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
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *New “adult standards” AM radio station in Toronto*, Decision CRTC 2000-205, 16 June 2000
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998
- *Approval of applications by the Canadian Broadcasting Corporation to convert AM station CBL Toronto to the FM band on frequency 99.1 MHz and to make other related changes; denial of eight other applications competing for use of this frequency; denial of related application*, Decision CRTC 97-362, 29 July 1997

**This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2015-162

Dissenting Opinion of Commissioner Raj Shoan

Introduction

I agree with the decision of my colleagues to grant MZ Media the use of a nested FM repeater for its CFZM Toronto station. Specifically, I agree that MZ Media has demonstrated a technical and economic need justifying the exceptional issuance of an FM licence for the use of a nested repeater for CFZM. Given the challenges inherent to operating AM radio stations in large urban centres and in Toronto in particular, a nested FM repeater should allow CFZM to repatriate lost listeners due to signal deficiencies.

The scope of this dissent is confined to the Commission's declaration in paragraph 37 of the majority decision that MZ Media, through the use of a 22.4-watt nested FM repeater to simulcast programming from its AM station, now owns and controls two FM stations in the Toronto market. For the reasons that follow, I am of the view that this application of the Commission's Common Ownership Policy on nested FM repeaters:

- will hamper the ability of all AM stations operating in large urban markets across the country to remedy legitimate signal deficiencies that have resulted from the growth of the urban markets in which they operate; and
- unnecessarily restricts the ability of MZ Media to grow as a radio broadcaster in the Toronto market.

Background

Surprisingly, there is no explicit Commission policy on the adoption of nested FM repeaters in Canada. A practice, however, has emerged over time on a piecemeal basis due to applications filed for nested repeaters from across the country. For the purposes of this dissent, I will examine five decisions that have resulted from these applications:

- *CBK Regina, CHFA and CBX Edmonton, CKSB St-Boniface and CBW Winnipeg, and CBR Calgary – Addition of FM transmitters*, Broadcasting Decision CRTC 2006-84, 16 March 2006 (Decision 2006-84);
- *CJOB Winnipeg – New FM transmitter in Winnipeg*, Broadcasting Decision CRTC 2007-350, 7 September 2007 (Decision 2007-350);
- *CFOS Owen Sound – New transmitter in Owen Sound*, Broadcasting Decision CRTC 2008-25, 6 February 2008 (Decision 2008-25);
- *CHQR Calgary – New FM transmitter in Calgary*, Broadcasting Decision CRTC 2012-307, 24 May 2012 (Decision 2012-307); and

- *CKNX Wingham – New transmitter in Wingham*, Broadcasting Decision CRTC 2013-238, 10 May 2013 (Decision 2013-238).

In each listed decision except for the first, the request for a nested FM repeater was denied by the Commission.

At paragraph 9 of the majority decision, the Commission articulates its test for the consideration of applications for technical changes to radio stations, namely, that they should demonstrate “compelling” technical or economic evidence that the existing technical parameters are not adequate to provide the service as originally proposed.⁵

In Decision 2006-84, the Canadian Broadcasting Corporation (CBC) was authorized to add six nested FM repeaters to supplement the signals of AM stations in Saskatoon, Edmonton, Winnipeg and Calgary.

The CBC argued that urban growth, the construction of high-rise concrete and steel buildings and increased electrical noise from overhead wires, large and small appliances and portable radio transmitters impeded the ability of its radio stations to deliver reliable high-quality AM signals to listeners in Winnipeg, Saskatoon, Calgary and Edmonton, particularly in downtown areas and in crowded, industrial areas. It further stated that a significant number of residents in these communities had complained about signal reception issues. In approving the CBC’s application, the Commission concluded that the use of FM transmitters to rebroadcast the signal of the existing AM radio stations was the most financially feasible option to deliver a good quality signal to the urban core of the affected cities while still maintaining good coverage throughout the service area of each radio station.

In Decision 2007-350, the Commission denied an application by Corus Premium Television Ltd. (Corus Television) to acquire a nested FM repeater for its CJOB Winnipeg station. In the Commission’s view, the Corus Television application could be distinguished from that of the CBC in that, among other factors, it proposed a full-power repeater whose reach would surpass CJOB’s AM coverage area. As such, the Commission was of the view that Corus Television’s application did not represent a true nested FM solution.

⁵ Paragraph 9 articulates the test as applicable for all “technical changes.” In fact, this is an overly broad application; many applicants will apply for power increases or repeaters that have nothing to do with economic or technical need at all. Some licensees seek merely to expand their signal into adjacent markets to provide service to interested communities. For the purposes of applications for *nested FM repeaters*, however, I accept that this test is the correct one.

It was in this decision that the Commission first raised the issue of the Common Ownership Policy in the context of nested FM applications. At paragraph 11, it stated:

While the Commission recognizes that the station would continue broadcasting as an AM service, it agrees with some of the interveners and considers that the addition of the proposed transmitter under the technical parameters proposed would result in [Corus Television] having three FM presences in Winnipeg.

No rationale was given for this determination. Further, the Commission's use of the term "presence" as opposed to "station" was also notable insofar as it was the first instance in which such a distinction was made. No explanation was given for the change in terminology in this decision.

In Decision 2008-25, the Commission denied an application by Bayshore Broadcasting Corporation (Bayshore) to acquire a nested FM repeater for CFOS Owen Sound. Again, the denial was based on the fact that the coverage area of the proposed repeater would surpass the AM coverage area.

With respect to the Common Ownership Policy, the Commission determined in this decision that, as in the Corus Television application for Winnipeg, approval would result in Bayshore possessing three FM "presences" in Owen Sound. In this decision, however, the Commission also stated that the additional presence would give Bayshore an "advantage in the market" and could limit the future diversity of voices in the market. The Commission did not elaborate on what, in its view, constituted an "advantage" for the purpose of its determination.

In Revised guidelines for the application of the Common Ownership Policy for Radio, Broadcasting Information Bulletin CRTC 2010-341, 4 June 2010, the Commission noted at paragraph 6 that rare exceptions to the Common Ownership Policy could be granted when, due to adverse economic circumstances, the survival of radio stations was in serious doubt. The Commission also stated that exceptions may be permitted to address severe technical limitations.

In Decision 2012-307, the Commission considered an application by Corus Entertainment Inc. (Corus Entertainment) for a nested FM repeater in Calgary following a call for applications for an available FM frequency in that market. While acknowledging that it owned the maximum of two FM stations for Calgary, Corus Entertainment submitted that the addition of the FM rebroadcasting transmitter to the broadcasting licence for CHQR Calgary would not represent a new FM service as the new transmitter would simply rebroadcast the programming of CHQR within its existing contours and would therefore be fully compliant with the Common Ownership Policy. Corus Entertainment added that if the Commission were to consider that the proposed FM transmitter would count as a third FM presence in the market under the Common Ownership Policy, it requested an exception to the policy.

Ultimately, the Commission was of the view that Corus Entertainment's request lacked a suitable economic or technical basis justifying a nested FM repeater.

In assessing the potential impact of Corus Entertainment's application on the Common Ownership Policy, the Commission indicated that the policy was based on a need to balance the forces of consolidation with a concern for diversity, increased scarcity of spectrum and the general public benefit. In the event that Corus Entertainment's application had passed muster and qualified for a nested FM repeater, the Commission indicated at paragraph 21 that it was of the view that it would have violated its Common Ownership Policy:

In this case, the Commission considers that the [Corus Entertainment] proposal could have the effect of migrating significant portions of CHQR's audience from its AM station to its proposed FM transmitter due to the better sound quality of an FM signal. Given that the proposed transmitter's coverage would span the entire Calgary CMA, the Commission considers that the transmitter would constitute an FM presence in the market equivalent in practice to an FM station. Therefore, the Commission considers that for the purposes of the application of the Common Ownership Policy, [Corus Entertainment] would own and control three FM stations in the Calgary market. The Commission also notes that there would be no new programming or other diversity added to the Calgary market and that [Corus Entertainment] would enjoy the regulatory flexibilities afforded to AM stations, including the ability to change its format, without being held to a minimum requirement for local programming.

In this decision, the Commission finally explained its purpose in using the term "presence" instead of "station" – namely, that they were equivalent for the purposes of the Common Ownership Policy.⁶ The Commission also noted as relevant factors, for the first time, that there would be no new programming or other diversity added to the Calgary market and that Corus Entertainment would enjoy the regulatory flexibilities afforded to AM stations, including the ability to change its format, without being held to a minimum requirement for local programming.

Finally, in Decision 2013-238, the Commission denied an application by Blackburn Radio Inc. (Blackburn) to add a 3,000-watt nested FM repeater to supplement the signal of CKNX Wingham. The proposed nested FM repeater was wholly contained within the primary marketing area of CKNX. In the Commission's view, however, the proposed repeater offered almost *too good* of a signal; as rationale for denying the application, the Commission expressed concern that the transmitter could end up migrating a significant portion of the listening audience located within that contour and that CKNX could consequently become a *de facto* FM service and be promoted as such.

⁶ In so doing, the Commission ignored the definition of "F.M. station" contained in the *Radio Regulations, 1986*: "'F.M. station' means a station that broadcasts in the F.M. frequency band of 88 to 108 MHz, but does not include a transmitter that only rebroadcasts the radiocommunications of a licensee." Further, the Commission made a policy distinction in the absence of a policy proceeding.

In summary, of the four denials, the rationales employed by the Commission for potential breaches of the Common Ownership Policy included:

- the FM “presences” were equivalent to FM “stations” – despite the fact that the Common Ownership Policy incorporates the legally defined term “station,” not “presence”;
- a nested FM repeater would give the licensee an undefined “advantage”;
- approval could limit the future diversity of voices in a given marketplace;
- approval would add no programming diversity to a given marketplace;
- approval would allow an FM “presence” to operate without any local programming commitment; and
- the proposed repeater was too favourable a signal insofar as it covered most of an AM station’s primary marketing area (without, however, extending beyond it).

Analysis

As a result of the majority’s decision, MZ Media’s nested FM repeater will count towards its total FM station allocation in the Toronto marketplace. Despite my reading of the foregoing precedents as described in the background section, I cannot fathom why, for policy purposes, MZ Media is being constrained in this way.

Above, I have listed six rationales previously used to tie nested FM applications to breaches of the Common Ownership Policy. Below, I will examine each rationale in the context of MZ Media’s application.

The first argument would be that MZ Media’s new FM repeater would constitute an FM presence equivalent to an FM station. With all due respect to my predecessors, I cannot accept this argument. The Common Ownership Policy has always used the term “station” – a defined term in the *Radio Regulations, 1986*. “Presence” has no legal meaning for the purposes of Commission regulations or policies. MZ Media’s nested FM repeater does not constitute a station for the purposes of the *Radio Regulations, 1986* or, by extension, the Common Ownership Policy as it will operate as a full repeater of CFZM Toronto.

The second argument would be that a nested FM repeater would give MZ Media an “advantage” in the marketplace. Given that my predecessors did not define what constitutes an “advantage” for the purposes of the Common Ownership Policy, I cannot apply any objective criteria to this analysis. I would note, however, that the primary purpose of a nested FM repeater is to remedy a serious signal deficiency of an AM signal. As such, a credible reply could be made that a nested FM repeater does not grant an “advantage” – it remedies a *disadvantage*. In so doing, it allows a station to operate according to its authorized parameters. I have difficulty seeing how this constitutes an “advantage.”

A third argument to be made would be that approval of a nested FM repeater could limit the future diversity of voices in the Toronto marketplace. In the present application, however, the frequency cited for use by MZ Media can *only be used* by MZ Media; to limit interference, Industry Canada rules respecting first and second adjacencies prohibit the use of the frequency which is the subject of this application in the absence of MZ Media's consent. Accordingly, this argument would not apply in this case.

A fourth argument would be that a nested FM repeater would add no programming diversity to the marketplace. This might be true if MZ Media were operating a Hot AC or Rock station but, as noted in MZ Media's application, CFZM is the only station in Toronto dedicated to serving the 65+ demographic. Given that CFZM's signal is presently impaired, a nested FM repeater will actually allow more Toronto residents to access one of the few truly distinctive services in the marketplace. Moreover, as the underserved 65+ demographic is the fastest growing demographic in the country, it is likely that an improved signal will allow CFZM to repatriate lost listeners who had genuine interest in the service but were forced to turn elsewhere due to signal deficiencies.

A fifth argument would be that approval would allow an FM "presence" to operate without any local programming commitment. Of all of the arguments to be considered, I would assess this rationale to be the most reasonable. Clearly, the Commission would want to avoid creating a framework that would allow a licensee to avoid FM-related local programming obligations by merely simulcasting an AM station – which has no local programming requirement – and still benefit from the ability to solicit local advertising.

This concern, however, should be balanced with the need to correct a legitimate signal deficiency. Moreover, in this case, the licensee in question appears to be doing a substantial amount of local programming. As noted in MZ Media's Supplementary Brief, CFZM broadcasts 45.5 hours per week of spoken word programming. This includes local, regional, national and international news; local traffic and weather surveillance; health reports; financial reports; year-round gardening tips; a spotlight on Canadian and international celebrities of a certain age; arts and cultural information; urban issues; political debates; current affairs; and the longest running (Scottish and Irish) radio shows in the history of Toronto radio.⁷ CFZM is also one of the few radio stations in Toronto that still originates live music; its "Lobby Concerts" have provided many opportunities for Canadian talent to have their performances air live on radio and on the web (audio & video).⁸

In the event that the Commission still had concerns, there would be nothing preventing it from imposing a local programming requirement on the AM station in exchange for the use of a nested FM repeater.

⁷ Paragraph 18, Supplementary Brief, MZ Media.

⁸ Paragraph 19, Supplementary Brief, MZ Media.

The last argument would be that the proposed repeater was “too favourable” a signal insofar as it covered most of the AM station’s primary marketing area. Of all of the arguments to be considered, I consider this to be the weakest. The nebulous “too favourable” argument ignores, in my view, the primary purpose of a nested FM repeater, which is to correct a serious signal deficiency. If a nested FM repeater increases tuning to a particular station, it is evidence that it served its purpose. The argument that a nested FM repeater application should be denied for its potential to experience “too much” success in a primary marketing area ignores the main purpose of a nested FM repeater. Moreover, it would be extremely difficult for any regulator to draw the line between “enough” and “too much” success. I struggle to understand the utility of this rationale.

What then are the implications of the majority decision? First, the challenges cited by the CBC in Decision 2006-84 and by MZ Media in this case are not specific to these entities. AM stations across the country suffer from many of the same challenges; increased urban density and electrical interference progressively degrade the efficacy of AM signals over time. This decision, however, will make it more difficult for operators with legitimate signal deficiencies to obtain relief by way of nested FM repeaters if they have two FM stations in a marketplace because they will have to apply for an exception to the Common Ownership Policy. Exceptions to the Common Ownership Policy, as the industry well knows, are rarities. As such, this decision is potentially punitive to AM operators in major markets.

Secondly, it will become harder for MZ Media, in particular, to acquire another FM station in the future because it has chosen to utilize a low-power (22.4 watt) FM repeater in order to correct a legitimate signal deficiency. If a 10-kilowatt station were to become available tomorrow for purchase, MZ Media, unlike other broadcasters, would have to apply for an exception to the Common Ownership Policy to acquire it. In essence, if MZ Media had the opportunity to purchase an FM station tomorrow, it would have to choose between giving up its low-power, nested FM repeater (and thereby cannibalizing its AM station) or keeping it and giving up an opportunity to create an entirely new service to meet the demands and needs of its target demographic. Neither option would serve the marketplace, the consumer or the broadcaster.

Conclusion

The background to this dissent illustrates the perils of piecemeal policy-making by a regulator. Instead of a cohesive, articulate and unambiguous policy respecting the use of nested FM repeaters and the interplay between such a policy and the Common Ownership Policy, the Commission’s case-by-case approach has resulted in a series of decisions that have served to confuse, rather than clarify, its policy approach to nested FM applications. The treatment of nested FM repeaters has developed almost as an offshoot of the Common Ownership Policy instead of a standalone policy in its own right.

In the process leading to Decision 2006-84, the Canadian Association of Broadcasters (CAB) and Golden West Broadcasting Ltd. submitted that the Commission should establish a policy outlining the specific conditions that would justify the use of nested FM transmitters of AM stations, as well as guidelines specifying the evidence that must be

presented in support of applications for such transmitters. In the CAB's view, a public policy process on the issue was needed to ensure that public and private broadcasters would be able to file applications for nested FM transmitters of AM stations on an equal footing.

For whatever reason, this sensible proposal was ignored. In my opinion, the Commission needs to address the use of nested FM repeaters through a clean policy process, query whether the Common Ownership Policy should apply to them and, if so, under what circumstances exceptions should be granted. The Commission is likely to see more of these types of applications in the future. Credible arguments can be made that, given that these nested repeaters are intended to remedy specific signal deficiencies, the Common Ownership Policy should not apply at all in certain instances. In the present case, I have some difficulty declaring the use of a low-power, 22.4-watt nested repeater as constituting an FM station.