



## Broadcasting Decision CRTC 2022-262

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Reference: 2022-10

Ottawa, 23 September 2022

**Amherstburg Broadcasting Corporation**  
Amherstburg, Ontario

*Public record: 2021-0540-3*

*Public hearing in the National Capital Region*  
*31 March 2022*

### **Low-power English-language commercial FM radio station in Amherstburg**

#### **Summary**

The Commission **approves** an application by Amherstburg Broadcasting Corporation for a broadcasting licence to operate a low-power, English-language commercial FM radio station in Amherstburg, Ontario.

#### **Application**

1. Amherstburg Broadcasting Corporation (Amherstburg Broadcasting) filed an application for a broadcasting licence to operate a low-power, English-language commercial FM radio station in Amherstburg, Ontario. The proposed station would operate at 107.9 MHz (channel 300LP) with an effective radiated power (ERP) of 50 watts (non-directional antenna with an effective height of the antenna above average terrain [EHAAT] of 51.6 metres). Since the applicant proposed to operate the first commercial radio station serving Amherstburg, the Commission did not issue a call for applications.<sup>1</sup>
2. This application (2021-0540-3) is the second application by Amherstburg Broadcasting for a licence to operate a new station. In 2020, the applicant filed a similar application (2020-0369-8), in which it requested authorization to launch a new station that would have operated under identical technical parameters to those proposed in the 2021 application addressed in this decision. As outlined in paragraphs 9 through 11 below, the

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<sup>1</sup> As set out in Broadcasting Regulatory Policy 2014-554, when the Commission receives an application for a new radio station, it generally issues a call for applications, subject to certain exceptions. Given that Amherstburg Broadcasting's proposed station would be the first commercial radio service for Amherstburg, the application filed by Amherstburg Broadcasting met an exception to that policy. Accordingly, the Commission did not issue a call for radio applications following the receipt of the application addressed in this decision.

Commission denied Amherstburg Broadcasting's first application in Broadcasting Decision 2021-206.

3. Amherstburg Broadcasting is a for-profit corporation wholly-owned and effectively controlled by Martyn Adler, the sole director and Chief Executive Officer of the corporation. Martyn Adler is a Canadian residing in Canada, and is therefore eligible to hold a broadcasting licence pursuant to the *Direction to the CRTC (Ineligibility of Non-Canadians)*.<sup>2</sup>
4. The applicant proposed to broadcast 126 hours of programming on the new station each broadcast week, of which 123.5 hours would be devoted to local programming. The remaining 2.5 hours would be dedicated to Canadian Press newscasts broadcast during late evening and overnight periods.
5. Amherstburg Broadcasting proposed to operate the new station within a Soft Adult Contemporary music format. It stated that the station's mix of news, talk and music programming would target the entire population of the Town of Amherstburg. The applicant confirmed that it would adhere to the regulatory requirements relating to the broadcast of Canadian musical selections, set out in the *Radio Regulations, 1986* (the Regulations).
6. In addition, the applicant proposed to devote 1,202 minutes of programming per broadcast week to spoken word content. Of that amount, 176 minutes would be devoted to news. The applicant undertook to devote at least 80% of this programming to local news (i.e. news relating to the Town of Amherstburg) and indicated that the remainder would be evenly divided between regional and international news. The remaining 1,026 minutes would be devoted to a weekday talk show, community calendar items and sports, weather and surveillance programming.
7. Amherstburg Broadcasting indicated that the proposed service would actively seek out regional musical artists with the intention of interviewing them, promoting them (on air, online, and at live venues) and broadcasting their musical selections where appropriate within the station's Soft Adult Contemporary format. The applicant further indicated that the proposed station would reflect local community issues via news and spoken word content, and would provide reporting and context to area news stories each day. It added that announcers would be encouraged to join local community groups and represent the station at fundraisers, information evenings and special events within the station's coverage area.
8. The Commission did not receive any interventions regarding this application.

## Background

9. As mentioned in paragraph 2 above, Amherstburg Broadcasting previously filed a similar application (2020-0369-8) for a broadcasting licence to operate a low-power,

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<sup>2</sup> SOR/97-192, 8 April 1997.

English-language commercial FM radio station in Amherstburg. The Commission received interventions in support of that application from a number of parties but also an intervention in opposition from Blackburn Radio Inc. (Blackburn), the licensee of CJWF-FM Windsor, CHYR-FM Leamington and CJSP-FM Leamington.

10. After examining the record for that application, the Commission found that approval of the proposed station, as a dedicated first radio service to Amherstburg, would result in increased diversity of programming in that radio market and would represent an appropriate use of spectrum. However, the Commission had concerns regarding the potential negative impact that the proposed station could have on incumbent stations in the greater Windsor radio market, which were facing challenges due to market conditions and the ongoing COVID-19 pandemic. The Commission therefore denied that application in Broadcasting Decision 2021-206.
11. In the same decision, the Commission stated that the applicant could submit another application in the future (specifically, when the applicant considered that the economic conditions of the Windsor radio market would be more favourable for the licensing of a new station) and that any such application would be examined on its own merits.

## **Issues**

12. The Commission has the authority, pursuant to subsection 9(1) of the *Broadcasting Act* (the Act), to issue and renew licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the Act.
13. After examining the record for this application in light of applicable regulations and policies, the Commission considers that it must address the following issues:
  - whether the use of the frequency 107.9 MHz by the applicant for its proposed station represents an appropriate use of spectrum;
  - whether the proposed station would increase the programming diversity in the market; and
  - whether approval of this application would have an undue negative economic impact on incumbent stations.

## **Appropriate use of spectrum**

14. The Department of Industry (the Department) has granted conditional technical acceptability of Amherstburg Broadcasting's proposed station. As such, the applicant's proposal adheres to the rules governing FM spectrum coordination.
15. There is one remaining FM allotment available for assignment in Windsor (107.9 MHz, channel 300A), which also covers Amherstburg. However, pursuant to the Department's *BPR-3: Application Procedures and Rules for FM Broadcasting Undertakings*, a low-power FM radio station, which is the type of station that Amherstburg Broadcasting

has requested authorization to operate, is considered a secondary assignment operating on an unprotected channel. As such, the operation of the applicant's proposed station would not remove the availability of this FM allotment nor preclude the Commission from later approving an application for a full-power radio station with protected status operating at 107.9 MHz.

16. The applicant's proposed station would therefore have a negligible impact on the availability of frequencies in the market. Further, as stated in paragraph 17 of Broadcasting Decision 2021-206, the applicant has acknowledged that it may, under such circumstances, need to vacate this frequency.
17. In light of the above, the Commission finds that the use of the frequency 107.9 MHz by the applicant for its proposed radio station represents an appropriate use of spectrum.

### **Diversity of programming**

18. In Broadcasting Public Notice 2008-4, the Commission indicated that the Canadian broadcasting system should ensure that audiences have access to a diversity of programming, especially local, regional and national content.
19. As noted above, the proposed radio station would represent a first service specific to Amherstburg. In the Commission's view, Amherstburg Broadcasting, through its proposal to broadcast a broad range of spoken word programming, including local news, and through its commitment to seek out regional music artists for the music programming to be broadcast, has demonstrated a strong commitment to providing local news and community reflection programming to Amherstburg.
20. In light of the above, the Commission finds that the proposed radio station, by providing a locally-dedicated radio programming service to Amherstburg, would provide it with programming diversity beyond what is currently provided by incumbent radio stations in Windsor.

### **Economic impact on incumbent stations**

21. The applicant proposed to operate the first local station serving the Town of Amherstburg and indicated that, for the purposes of its application, the Town of Amherstburg comprises Amherstburg proper as well as a number of surrounding communities.<sup>3</sup>

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<sup>3</sup> More specifically, Amherstburg Broadcasting indicated that, for the purposes of its application, the Town of Amherstburg includes Amherstburg proper as well as a number of villages and hamlets, including Amherst Point, Bar Point, Busy Bee Corners, Edgewater Beach, Glen Eden, Lake Erie Country Club, Lakewood Beach, Malden Centre, McGregor (partially), River Canard (partially), Sunset Beach, Willow Beach, Willowood, Golfview, Kingsbridge, Pointe West, Auld, Gordon, Loiselleville, North Malden, Quarries, Southwick, Splitlog, Good Child Beach, and The Meadows.

22. In the case of an FM radio station, the term “market” is defined in the Regulations to mean “the F.M. 3mV/m contour or the central area<sup>4</sup> as defined by the Bureau of Broadcast Measurement (BBM) [now known as Numeris], whichever is smaller.”
23. Based on the technical parameters proposed by Amherstburg Broadcasting, the market for its proposed station would be defined by the station’s primary (3 mV/m) contour. This contour would encompass Amherstburg proper as well as some surrounding communities. However, it would not include all of the communities listed by Amherstburg Broadcasting as being part of the Town of Amherstburg. That is, although the Town of Amherstburg, according to the 2021 Census conducted by Statistics Canada, has a population of 23,524 people, the station’s primary contour would encompass a population of only 13,907 people.
24. Amherstburg is located south of the city of Windsor and within the Windsor Central Numeris Area (Windsor CTRL). In addition to a specialty religious station and a campus radio station, Windsor CTRL is served by several commercial radio stations operated by 2345771 Ontario Inc., Bell Media Regional Partnership Inc. (Bell Media) and Blackburn. None of these stations target Amherstburg specifically, none of these licensees intervened in opposition to this application, and the contours of Amherstburg Broadcasting’s proposed station would not extend to cover the City of Windsor.
25. After reviewing this application, the Commission has determined that the proposed station’s primary contour would have some overlap with the primary contours of three incumbent commercial stations (specifically, Blackburn’s CJWF-FM Windsor and Bell Media’s CKLW Windsor and CKWW Windsor). However, the populations in the overlapping areas only account for a very small share of the populations served by Blackburn’s CJWF-FM (i.e. less than 1.2% of the population within CJWF-FM’s primary contour) and by Bell Media’s CKLW and CKWW (i.e. less than 3.3% of the populations within the primary contour of each of Bell Media’s stations). As such, the Commission considers that the launch of the proposed station would be unlikely to significantly impact the revenues generated by these incumbent stations. In addition, the Commission considers that Bell Media, as the operator of four incumbent stations, holds a dominant position in the market and would be in a strong position to withstand competition from a new low-power station launched by an independent operator.
26. As mentioned in paragraphs 9 through 11 above, the Commission previously denied a similar application by Amherstburg Broadcasting in Broadcasting Decision 2021-206. In that decision, among other considerations, the Commission identified the effects of the COVID-19 pandemic as factors that impacted its finding of whether an undue impact on incumbent stations would result from approval of Amherstburg Broadcasting’s 2020 application. However, the Commission now considers that the concerns and uncertainty resulting from the pandemic’s impact on the market are less significant. Moreover, many markets in Canada have seen an increase in revenues over the past year, and it is expected that the manufacturing sector, which plays a significant role in Windsor’s economy, will recover.

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<sup>4</sup> A central Numeris area corresponds to a Census Metropolitan Area (as defined by Statistics Canada).

27. In light of the above, the Commission finds that approval of this application would not have an undue economic impact on incumbent stations in the market.

## **Conclusion**

28. In light of all of the above, the Commission **approves** the application by Amherstburg Broadcasting for a broadcasting licence to operate a low-power, English-language commercial FM radio programming undertaking in Amherstburg, Ontario.

## **Reminder**

29. As set out in section 16 of the Regulations, licensees have obligations relating to the broadcast of emergency alert messages received from the National Alert Aggregation and Dissemination System. The Commission reminds the licensee that compliance with section 16 of the Regulations will require that any alert broadcast decoders (e.g., ENDEC) used for the purposes of broadcasting emergency alert messages be installed and programmed to properly account for the authorized contours of the radio station. A confirmation of the installation and test of the alert broadcast decoder is to be provided to the Commission within 90 days of installation.

Secretary General

## **Related documents**

- *Low-power commercial FM radio station in Amherstburg*, Broadcasting Decision CRTC 2021-206, 17 June 2021
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *Diversity of voices* – Regulatory policy, Broadcasting Public Notice CRTC 2008-4, 15 January 2008

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

## Appendix to Broadcasting Decision CRTC 2022-262

### Terms, conditions of licence, expectation and encouragement for the low-power English language commercial FM radio station in Amherstburg, Ontario

#### Terms

The licence will expire 31 August 2029.

The station will operate at 107.9 MHz (channel 300LP) with an effective radiated power (ERP) of 50 watts (non-directional antenna with an effective height of the antenna above average terrain [EHAAT] of 51.6 metres).

The Department of Industry's *BPR-3: Application Procedures and Rules for FM Broadcasting Undertakings* specifies that a low-power FM radio station or rebroadcasting transmitter is considered a secondary assignment operating on an unprotected channel. Should an FM station or transmitter with protected status be granted a frequency incompatible with that used by the low-power station or transmitter considered in this decision, the applicant may need to cease the operation of that low-power station or transmitter, or file an application to change its frequency and/or technical parameters.

Pursuant to subsection 22(1) of the *Broadcasting Act*, no licence may be issued until the Department of Industry 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 only 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 **23 September 2024**. 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 licensee shall adhere 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, as well as to the conditions set out in the broadcasting licence for the undertaking.

#### Expectation

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.

**Encouragement**

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.