



Broadcasting Decision CRTC 2023-109

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Ottawa, 18 April 2023

Aboriginal Multi-Media Society of Alberta
Edmonton and Fort McMurray, Alberta

Public record: 2022-0820-7

CIWE-FM Edmonton – New transmitter in Fort McMurray

Summary

The Commission **denies** an application by the Aboriginal Multi-Media Society of Alberta to amend the broadcasting licence for the English- and Indigenous-language Indigenous (Type B Native) radio programming undertaking CIWE-FM Edmonton, Alberta, to operate a rebroadcasting transmitter in Fort McMurray, Alberta.

Background

1. The Aboriginal Multi-Media Society of Alberta (AMMSA) is a not-for-profit Indigenous communications society that is the licensee of three Indigenous (Type B Native¹) radio stations in Alberta: CFWE-FM-4 Edmonton, CIWE-FM Edmonton and CJWE-FM Calgary.
2. AMMSA originally established CFWE-FM-4 as an exempt (Type A Native) service distributing its signal via satellite to 35 FM rebroadcasting transmitters serving isolated or underserved Indigenous communities in Alberta.
3. Following a call for applications to serve the Edmonton market, the Commission issued Broadcasting Decision 2008-288 in which it approved an application by AMMSA for a broadcasting licence to operate CFWE-FM-4 along with its 35 rebroadcasting transmitters and add a new rebroadcasting transmitter in Fort McMurray, Alberta.
4. In Broadcasting Decision 2017-198, following a call for applications to serve the urban Indigenous communities in various urban markets across Canada, the Commission approved two applications by AMMSA for broadcasting licences to operate English- and

¹ Type B Native stations, as defined in Public Notice 1990-89, are referred to as Indigenous stations in this decision.

Indigenous-language Indigenous FM radio stations to serve the urban Indigenous communities of Edmonton and Calgary.

Application

5. AMMSA filed an application to amend the broadcasting licence for the English- and Indigenous-language Indigenous radio programming undertaking CIWE-FM to operate a rebroadcasting transmitter in Fort McMurray. The Commission did not receive any interventions in regard to this application.
6. The proposed rebroadcasting transmitter would operate at 89.5 MHz (channel 208C1) with an effective radiated power (ERP) of 100,000 watts (non-directional antenna with an effective height of the antenna above average terrain [EHAAT] of 77.9 metres).
7. In its application, AMMSA stated its desire to provide service to Fort McMurray and the Regional Municipality of Wood Buffalo. However, the application did not cite a technical or economic need for this amendment.
8. AMMSA also stated that the proposed rebroadcasting transmitter would enhance the programming available to the Indigenous population in the area. CIWE-FM's programming features Indigenous music in a variety of musical genres that complement the country music format AMMSA currently offers to audiences in Fort McMurray and the Regional Municipality of Wood Buffalo via the rebroadcasting transmitter of CFWE-FM-4.

Regulatory framework

9. The Commission has the authority, pursuant to subsection 9(1) of the *Broadcasting Act* (the Act), to issue licences subject to such conditions related to the circumstances of the licensee as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the Act and to amend those conditions on application of the licensee.
10. As set out in Public Notice 1990-89, the Commission expects the programming of Indigenous radio stations to specifically reflect the interests and needs of the Indigenous audiences that the stations are licensed to serve. These stations have a distinct role in addressing the specific cultural and linguistic needs of their audiences and creating an environment in which Indigenous music and spoken word creators can develop and flourish.
11. When a licensee of a radio station files an application for technical changes, the Commission generally requires that the licensee present compelling technical or economic evidence justifying the requested technical changes. The Commission may, as an exception to this general approach, approve applications that do not provide compelling technical or economic evidence where the particular circumstances of the licensee warrant it. The Commission has deviated from this approach in the past to approve applications that primarily reflect a desire to serve additional communities when it is in the public interest to do so.

Issues

12. After examining the record for this application in light of applicable regulations and policies, the Commission considers that it should address the following issues:

- whether the proposed rebroadcasting transmitter represents an appropriate technical solution;
- whether the proposed frequency for the new rebroadcasting transmitter represents an appropriate use of spectrum;
- whether approval of the application would result in an undue economic impact on incumbent stations;
- whether the applicant has justified an exception to the Commission's general approach for the requested technical changes; and
- whether approval of the application would undermine the integrity of the Commission's licensing process.

Appropriate technical solution

13. AMMSA did not submit this technical amendment on the grounds of technical deficiencies, but rather to provide service to Fort McMurray and the Regional Municipality of Wood Buffalo.

14. The Commission considers that the addition of a rebroadcasting transmitter is generally an effective solution to improving coverage and should provide sufficient service to the communities.

15. In light of the above, the Commission finds that AMMSA's proposed rebroadcasting transmitter constitutes an appropriate technical solution for providing coverage and sufficient service to Fort McMurray and the Regional Municipality of Wood Buffalo.

Appropriate use of spectrum

16. As noted above, AMMSA proposed the use of frequency 89.5 MHz (channel 208C1) for the new rebroadcasting transmitter in Fort McMurray. The Commission has identified other frequencies which could support similar parameters to the proposed rebroadcasting transmitter.

17. In light of the above, the Commission finds that AMMSA's proposal represents an appropriate use of spectrum.

Economic impact on incumbent stations

18. The proposed rebroadcasting transmitter's primary contour would overlap with the primary contour of five commercial radio stations, one Indigenous radio station, and three rebroadcasting transmitters.²
19. AMMSA stated that it does not intend to establish a local office nor will it have any sales representatives in Fort McMurray.
20. While the proposed rebroadcasting transmitter could strengthen its position with advertisers trying to reach the Indigenous population in northern Alberta, AMMSA further stated that it would have no impact on local sales generated by incumbent radio stations.
21. In light of the above, and given the nature of the proposed service, the Commission finds that approval of AMMSA's application would not have undue economic impact on incumbent stations in the Fort McMurray radio market.

Justification of an exception to the Commission's general approach

22. When a licensee of a radio station files an application for a technical amendment without citing a technical or economic need in order to expand into a different market by way of an additional rebroadcasting transmitter, the licensee must generally give a rationale as to why the amendment should be approved on an exceptional basis. Such applications are evaluated on a case-by-case basis and take into account the rationale submitted by the licensee and the unique factors of each station's situation.
23. CIWE-FM showcases Indigenous contemporary, rock, pop, blues, and hip-hop artists. AMMSA stated that its primary intent is to offer this complementary programming to urban Indigenous populations who live off reserve in Fort McMurray while maximizing the exposure of Indigenous artists.
24. In AMMSA's view, the addition of CIWE-FM's programming to the existing CFWE-FM-4's programming in the market would help further increase awareness of issues, events and news from the region and expose an even greater number of the Indigenous population to their native languages, which is one of AMMSA's core objectives.
25. Unfortunately, the Commission is of the view that while the application identifies what the proposed amendment would achieve, it does not provide rationale addressing why it should be approved on an exceptional basis and, unlike other similar applications such as

² Two commercial radio stations operated by Harvard Broadcasting Inc. (CFVR-FM and CHFT-FM); two commercial radio stations and one rebroadcasting transmitter operated by Rogers Media Inc. (CKYX-FM, CJOK-FM and CJOK-FM-1); one commercial radio station operated by United Christian Broadcasters Media Canada (CKOS-FM); one Indigenous radio station operated by Fort McKay Radio Society (CIYU-FM); one rebroadcasting transmitter operated by CKUA Radio Foundation (CKUA-FM-11); and one rebroadcasting transmitter operated by AMMSA (CFWE-FM-5).

those approved in Broadcasting Decisions 2017-326 and 2019-188, contains no demonstration of public support.

26. In Broadcasting Decisions 2020-331 and 2021-80, the Commission approved applications by AMMSA for the addition of low-power rebroadcasting transmitters in remote Indigenous communities, as the public record demonstrated that such an exception was warranted in the public interest. However, this is not the case with the public record of the present application which seeks to expand service to an urban centre.
27. Furthermore, in those instances, the Commission had been satisfied that the applicant had demonstrated that the service had a connection with and was of interest to the community to be served.
28. As set out in Public Notice 1990-89, the Commission expects the programming of Indigenous radio stations to specifically reflect the interests and needs of the Indigenous audiences that the stations are licensed to serve. However, AMMSA has not indicated that it would provide any programming directed specifically to the Indigenous audience located in Fort McMurray and the Regional Municipality of Wood Buffalo or that the programming that it did provide would be of interest to that audience.
29. In Broadcasting Decision 2022-125, the Commission approved an application by AMMSA for the addition of a rebroadcasting transmitter in Lethbridge, Alberta, on the grounds that it was consistent with the purpose for which CJWE-FM was originally licensed, namely serving the urban Indigenous population in the Treaty 7 area. With respect to the present application, no such nexus to the market that AMMSA was originally licensed to serve was demonstrated.
30. While the Commission considers that AMMSA's proposal would provide enhanced exposure for Indigenous spoken word and musical content creators, the extent to which the proposal would provide programming targeted to the specific needs and interests of the Indigenous audience in Fort McMurray and the Regional Municipality of Wood Buffalo is unknown. The Commission's decision-making process is driven by the record of the proceeding and, in this instance, there was no evidence provided by AMMSA that the programming would be of interest to the community or that the community supports this proposal.
31. In light of the above, the Commission finds that AMMSA has demonstrated neither technical nor economic need for the proposed amendment and that the public record does not support approval of the application as an exception to the Commission's general approach for technical amendments.

Integrity of the Commission's licensing process

32. Where a licensee wishes to provide service to a market that it is not already licensed to serve, it is generally required to submit an application for a new licence. Technical amendment applications are meant to address technical deficiencies or economic issues faced by a licensee. They are not meant to allow entry into a new market without going through the licensing process. However, the Commission has been willing to grant

exceptions where they are justified, such as when the public interest warrants the expansion.

33. In Broadcasting Decision 2022-345, the Commission noted the recent instances of applicants using the current technical amendment process to expand beyond their licensed market without providing sufficient rationale or evidence in support of their applications. Unlike applications for the provision of new services, which require a more rigorous process, including a public hearing, technical amendment applications follow a simpler Part 1 process. As a result, they do not trigger the same rigorous market capacity analyses, draw the same attention, require licensees to demonstrate their business case, and/or explain in detail how their service will be locally focussed and meet the needs of the community they seek to serve as would applications for new services.
34. As noted above, while the Commission approved applications to amend the broadcasting licences for CFWE-FM-4 and CJWE-FM in order to operate rebroadcasting transmitters outside of the originally licensed service areas, these can be distinguished from the present application. Specifically, these applications included rationale for the proposed service expansions and/or evidence of public support in favour of the amendments such that the Commission was able to find that an exception to its general approach was warranted and in the public interest.
35. As noted above, the present application does not provide the same type of rationale or supporting evidence to demonstrate that an exception to the Commission's general approach to technical amendments is warranted.
36. The proposed rebroadcasting transmitter would extend the reach of CIWE-FM to an area that the applicant was not originally licensed to serve and doing so would not appear to be consistent with the purpose of the original station, as set out in Broadcasting Decision 2017-198. The public record also does not demonstrate community support for the proposed service expansion, and no submissions by AMMSA have been made regarding how the existing programming would specifically meet the needs and interests of the community it seeks to serve.
37. In light of the above, the Commission finds that the approval of the present application would be a departure from typical Commission practices and would undermine the integrity of the Commission's licensing process.

Conclusion

38. In light of the above, the Commission **denies** the application by AMMSA to amend the broadcasting licence for the English- and Indigenous-language Indigenous radio programming undertaking CIWE-FM Edmonton in order to operate a rebroadcasting transmitter in Fort McMurray.
39. However, the Commission does recognize AMMSA's important contributions in serving Indigenous audiences and giving voice and exposure to Indigenous content creators.

40. The Commission reminds AMMSA and all licensees of radio undertakings that applications for technical amendments should demonstrate a compelling technical or economic need. If a licensee wishes to file a technical amendment application seeking to add a rebroadcasting transmitter to serve an adjacent or distinct market and cannot demonstrate such a need, it must provide compelling rationale as to why an exception to the general rule regarding technical amendments and the licensing process is warranted, and provide evidence supporting this rationale. Otherwise, the Commission's current licensing process requires applicants to apply for a new broadcasting licence when they wish to provide service to a market they are not already licensed to serve.

Secretary General

Related documents

- *CJRO-FM Carlsbad Springs – New transmitter in Casselman*, Broadcasting Decision CRTC 2022-345, 20 December 2022
- *CJWE-FM Calgary – New transmitter in Lethbridge*, Broadcasting Decision CRTC 2022-125, 10 May 2022
- *CFWE-FM-4 Edmonton – New transmitter in Janvier*, Broadcasting Decision CRTC 2021-80, 22 February 2021
- *CFWE-FM-4 Edmonton – New transmitter in Rocky Mountain House*, Broadcasting Decision CRTC 2020-331, 9 September 2020
- *CFWE-FM-4 Edmonton – New transmitter in Red Deer*, Broadcasting Decision CRTC 2019-188, 30 May 2019
- *CFWE-FM-4 Edmonton – New FM transmitter in Grande Prairie*, Broadcasting Decision CRTC 2017-326, 6 September 2017
- *Licensing of new radio stations to serve the urban Indigenous communities in Vancouver, Edmonton, Calgary, Ottawa and Toronto*, Broadcasting Decision CRTC 2017-198, 14 June 2017
- *Licensing of new radio stations to serve Edmonton, Alberta*, Broadcasting Decision CRTC 2008-288, 17 October 2008
- *Native Broadcasting Policy*, Public Notice CRTC 1990-89, 20 September 1990