



Broadcasting Decision CRTC 2023-126

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Reference: 2022-248

Ottawa, 4 May 2023

Gesgapegiag Community Access Program Gesgapegiag, Quebec

Public record: 2022-0023-6

Public hearing in the National Capital Region

18 November 2022

Low-power Indigenous FM radio station in Gesgapegiag

Summary

The Commission **approves** an application by the Gesgapegiag Community Access Program for a broadcasting licence to operate a low-power, Indigenous (Type B Native) FM radio station in Gesgapegiag, Quebec.

Background

1. In Broadcasting Decision 87-500,¹ the Commission approved an application by Douglas Martin² for a low-power Indigenous (Type B Native)³ radio station at Maria Reserve, now known as Gesgapegiag, Quebec. The Commission subsequently renewed the broadcasting licence for that station, CHR-G-FM, in Broadcasting Decisions [91-566](#), 96-463 and 2001-337. As a subsequent licence renewal application was not submitted, CHR-G-FM's authority to broadcast ceased on 1 September 2008, which was the end of the licence term set out in Broadcasting Decision 2001-337.

Application

2. The Gesgapegiag Community Access Program (GCAP), formerly Douglas Martin, on behalf of a corporation to be incorporated, filed an application for a new broadcasting licence to operate a low-power, Indigenous (Type B Native) FM radio station in Gesgapegiag, Quebec.

¹ There is no link for this decision on the CRTC website due to the age of the decision. A copy of the decision is available from the Commission on request.

² In Broadcasting Notice of Consultation 2022-248, the name of the applicant was Douglas Martin, on behalf of a corporation to be incorporated

³ In this decision, Type B Native radio stations, as defined in Public Notice 1990-89, are called "Indigenous radio stations."

3. The GCAP is a not-for-profit corporation controlled by its Board of Directors.
4. The station would operate at 101.7 MHz (channel 269LP) with an effective radiated power (ERP) of 50 watts (omnidirectional antenna with an effective height of the antenna above average terrain [EHAAT] of -14.2 metres).
5. The applicant proposed to broadcast 126 hours of programming per broadcast week, of which approximately 45 hours would be local programming and 81 hours would be wrap-around programming. Programming would consist of a mix of music and talk shows and would include locally relevant community information in the Migmaq⁴ language, as well as programming from other Indigenous communities.
6. Over the course of the broadcast week, approximately 50 hours of programming would be in English, 5 hours would be in French, and 5 hours would be in Migmaq.
7. The Commission did not receive any interventions related to this application.

Issues

8. The Commission has the authority, pursuant to subsection 9(1) of the *Broadcasting Act* (the Act) to issue broadcasting 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.
9. 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 applicant's ownership structure satisfies the requirements of the Act, *the Direction to the CRTC (Ineligibility of non-Canadians)* (the Direction)⁵, and the Commission's policy for Indigenous stations set out in Broadcasting Policy Public Notice 1990-89 (the Native Broadcasting Policy):
 - whether the use of the frequency 101.7 MHz by the applicant for its proposed station would represent an appropriate use of spectrum;
 - whether this application satisfies the provisions for Indigenous radio stations set out in the Native Broadcasting Policy as well as in Public Notice 2001-70; and
 - whether approval of this application would have an undue economic impact on incumbent stations.

⁴This decision uses the applicant's spelling of the name of the language.

⁵ SOR/97-192, 8 April 1997

Ownership structure

10. Section 3(1)(a) of the Act, states that the Canadian broadcasting system shall be effectively owned and controlled by Canadians.
11. The Direction provides that no broadcasting licence may be issued, and no amendments or renewals thereof may be granted, to an applicant that is a non-Canadian. Furthermore, the Direction establishes that Canadian control of a licensee must not only be *de jure* (legal control) but also *de facto* (control in fact).
12. Finally, as per the Native Broadcasting Policy: “a native undertaking is owned and controlled by a non-profit organization whose structure provides for board membership by the native population of the region served.”
13. Douglas Martin originally submitted the current application as an individual. However, after discussions with Commission staff concerning the regulatory structure set out above, the application was amended so that the licence would be held by the GCAP.
14. The purpose of this change was so that the applicant would comply with the ownership requirements of the Native Broadcasting Policy and the definition of a “qualified corporation” in order to be considered Canadian under the Direction. The relevant part of this definition reads as follows:

A “qualified corporation” means a corporation incorporated or continued under the laws of Canada or a province, where

 - (a) the chief executive officer or, where the corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer, and not less than 80 per cent of the directors are Canadians;
15. To qualify as a Canadian on the individual level, the Direction requires that the individual is either:
 - (a) a citizen within the meaning of subsection 2(1) of the Citizenship Act who is ordinarily resident in Canada;
 - (b) a permanent resident within the meaning of subsection 2(1) of the *Immigration Act* who is ordinarily resident in Canada and has been ordinarily resident in Canada for not more than one year after the date on which that person first became eligible to apply for Canadian citizenship.

16. After examining the structure of the GCAP, the Commission is of the view that the applicant meets the requirements of a qualified corporation and has legal control as per the Direction because:
- the organization is incorporated under a provincial law;
 - the CEO or similar-acting person is Canadian;
 - not less than 80% of the directors are Canadian; and
 - the organization is Canadian and controlled by Canadians.
17. Furthermore, by setting up the Board of Directors and providing its members the opportunity to participate in the affairs of the corporation, where any adult member of the community can become a member, the GCAP complies with the Native Broadcasting Policy. The Commission is further of the view that, under the new structure, the Board of Directors, which would come from the community to be served, would have *de facto* control of the proposed station.
18. The GCAP is currently finalizing its by-laws. The Commission considers it appropriate to require the applicant to submit its finalized by-laws within six months of the date of this decision. The final bylaws must indicate:
- the number of directors required for quorum;
 - the length of the term that an elected director will serve; and
 - the selection process to elect new directors (e.g. by majority vote of the current directors).

Appropriate use of spectrum

19. The Department of Industry (also known as Innovation, Science and Economic Development Canada) has granted conditional technical acceptability of the proposed station. As such, the applicant's proposal adheres to the rules governing FM spectrum coordination.
20. Given that the proposed service would be a low-power FM station, its use of the proposed frequency would not remove the availability of that frequency and would therefore have a negligible impact on the availability of frequencies in Gesgapegiag and surrounding areas.
21. In light of the above, the Commission finds that the use of frequency 101.7 MHz by the applicant for its proposed radio station would represent an appropriate use of spectrum.

Provisions for Indigenous radio stations

22. As set out in the Native Broadcasting Policy, the Commission expects the programming of Indigenous radio stations to be specifically oriented to 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.

23. The Commission acknowledges the applicant's commitment to local reflection, to broadcasting original programming and to furthering the preservation of Indigenous language and cultures through the broadcast of programming that would be offered in the Migmaq language.
24. The Commission also considers that the broadcast of such programming would not only further the objectives set out in the Act but would also be consistent with the Government of Canada's commitment to support the reclamation, revitalization, maintenance and strengthening of Indigenous languages, as set out in the *Indigenous Languages Act*.
25. In Public Notice 2001-70, the Commission determined that it would be appropriate to impose on non-exempt Indigenous radio stations a condition of licence requiring that a minimum of 35% of content category 2 (Popular Music) musical selections broadcast during each broadcast week be devoted to Canadian selections. The applicant indicated in its application that it would adhere to such a condition of licence.
26. In light of the above, the Commission finds that this application is consistent with the provisions for Indigenous radio stations set out in the Native Broadcasting Policy as well as those set out in Public Notice 2001-70.

Economic impact on incumbent stations

27. Gesgapegiag, Quebec, is a First Nation reserve located on the Gaspésie peninsula, along the shore of Chaleur Bay, north of New Brunswick. The primary (3 mV/m) contour of the proposed station is within the primary contours of one French-language station: CIEU-FM Carleton, Quebec, owned by Diffusion communautaire Baie-des-Chaleurs inc., and one French-language rebroadcasting transmitter: CHNC-FM-1 Carleton, Quebec, a rebroadcasting transmitter of CHNC-FM New Carlisle, Quebec, operated by Coopérative des travailleurs CHNC. However, the applicant's proposed primary contour reaches only 1.2% of the population served by CIEU-FM and only 4.5% of the population served by CHNC-FM-1.
28. Furthermore, the proposed station would rely on government grants and fundraising rather than advertising revenues. As well, the applicant proposes to broadcast only about 5 hours of French-language programming per week.
29. In light of the above, the Commission finds that approval of this application would not have an undue economic impact on incumbent stations.

Conclusion

30. In light of all of the above, the Commission **approves** the application by the GCAP (formerly Douglas Martin, on behalf of a corporation to be incorporated) for a broadcasting licence to operate a low-power, Indigenous (Type B Native) FM radio station in Gesgapegiag, Quebec.
31. The terms and **conditions of licence** are set out in the appendix to this decision.
32. In addition, the Commission **requires** the GCAP to submit its finalized bylaws within six months of the date of this decision. The final by-laws must include provisions that address:
 - the number of directors required for quorum;
 - the length of the term that an elected director will serve; and
 - the selection process to elect new directors (e.g. by majority vote of the current directors).

Reminders

33. The licensee must comply at all times with the *Radio Regulations, 1986* (the Regulations).
34. 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.
35. The structure of the GCAP must allow for board membership from the Indigenous community that the undertaking serves, as indicated in the Native Broadcasting Policy. The GCAP must comply at all times with the policies, regulations and conditions of licence set by the Commission.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2022-248, 20 September 2022
- *Licence renewal for Native radio station CHRG-FM*, Decision CRTC 2001-337, 15 June 2001

- *Changes to conditions of licence for certain native radio undertakings*, Public Notice CRTC 2001-70, 15 June 2001
- *Untitled*, Broadcasting Decision CRTC 96-463, 23 August 1996
- *Untitled*, Broadcasting Decision CRTC 91-566, 7 August 1991
- *Native Broadcasting Policy*, Public Notice CRTC 1990-89, 20 September 1990

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2023-126

Terms, conditions of licence and encouragement for the low-power English-, French- and Miqmaq-, language Indigenous (Type B Native) FM radio programming undertaking in Gesgapegiag, Quebec

Terms

The licence will expire 31 August 2029.

The station will operate at 101.7 MHz (channel 269LP) with an effective radiated power (ERP) of 50 watts (omnidirectional antenna with an effective height of the antenna above average terrain [EHAAT] of -14.2 metres).

Pursuant to subsection 22(1) of the *Broadcasting Act*, no licence may be issued until the Department of Industry (also known as Innovation, Science and Economic Development Canada, hereafter referred to as the Department) notifies the Commission that its technical requirements have been met and that a broadcasting certificate will be issued.

Furthermore, the Commission will only issue a licence for this undertaking 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 **4 May 2025**. To ensure that such a request is processed in a timely manner, it should be submitted in writing at least 60 days before this date.

The Department's *BPR-3: Application Procedures and Rules for FM Broadcasting Undertakings* specifies that a low-power FM radio station 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 considered in this decision, the applicant may need to cease the operation of that low-power station or file an application to change its frequency and/or technical parameters.

The licensee must file with the Commission, by no later than six months following the publication of this decision, a copy of the executed bylaws of the Gesgapegiag Community Access Program. The bylaws must include provisions that address: (i) the number of directors required for quorum; (ii) the term an elected director will serve for; and (iii) the selection process to elect new directors (e.g. by majority vote of the current directors).

Conditions of licence

1. The licensee shall devote, in each broadcast week, no less than 35% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety.

For the purposes of this condition of licence, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meanings as those set out in the *Radio Regulations, 1986*. A musical selection by an Indigenous creator who resides in Canada is considered a Canadian selection.

2. If the licensee creates 42 or more hours of original programming in any broadcast week, the licensee shall adhere to the Canadian Association of Broadcasters’ *Equitable Portrayal Code*, as amended from time to time and approved by the Commission, and to the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

Encouragement

Where the licensee intends on carrying wrap-around programming, the Commission encourages it to use programming from another Indigenous station or network.