



Broadcasting Decision CRTC 2023-176

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Ottawa, 8 June 2023

Radio Markham York Incorporated
Markham, Ontario

Public record: 2022-0906-4

CFMS-FM Markham – New transmitter in Pickering

Summary

The Commission **denies** an application by Radio Markham York Incorporated to operate an FM transmitter in Pickering, Ontario, to rebroadcast the programming of the English-language commercial radio station CFMS-FM Markham, Ontario.

Application

1. Radio Markham York Incorporated (Radio Markham) filed an application to operate a new FM transmitter in Pickering, Ontario, to rebroadcast the English-language radio programming undertaking CFMS-FM Markham, Ontario.
2. The proposed rebroadcasting transmitter would operate at 91.7 MHz (channel 219A) with an average effective radiated power (ERP) of 639 watts (maximum ERP of 2,000 watts with an effective height of antenna above average terrain [EHAAT] of 45.1 metres).
3. Radio Markham indicated that the addition of the proposed transmitter would improve the station's access to its primary market of Markham, particularly eastern Markham, where it stated that its current signal is deficient. It further submitted that CFMS-FM's inability to provide a strong signal to the area puts it at an economic disadvantage with neighbouring stations that are able to sell more advertising.
4. Radio Markham added that this proposed increased coverage would improve service to its English-language market, but especially its main audience composed of third language groups, thereby supporting the diversity of languages.

Interventions and replies

5. The Commission received 39 interventions in support of this application, mainly from local businesses, current and former advertisers, community groups, artists, radio producers, listeners, York Region Municipality and the Mayor of Markham. Supporting intervenors celebrate the station's local reflection and its effort to serve the different ethnic communities.

6. Comments were submitted from My Broadcasting Corporation, owner of R.B. Communications Ltd which operates CIXL-FM Welland and by an individual regarding co-channel interference. The Commission also received interventions in opposition to the application from Erin Community Radio, licensee of the English-language community radio station CHES-FM Erin ; the National Campus and Community Radio Association (NCRA); 8041393 Canada Inc., the licensee of the commercial ethnic radio station CJRK-FM Scarborough, and Durham Radio Inc. (Durham Radio), the licensee of the English-language commercial radio station CJKX-FM Ajax. Radio Markham replied to these opposing interventions.
7. In its intervention, 8041393 Canada Inc. noted that the additional transmitter proposed by Radio Markham would encroach on its territory. It pointed to Broadcasting Decision 2014-574 to argue that the Commission approved CJRK-FM's application to serve Scarborough. While the proposed contours for CFMS-FM-1 would capture Markham, it would primarily capture Pickering, Scarborough and parts of Uxbridge and Whitchurch-Stouffville.
8. In its reply to 8041393 Canada Inc., Radio Markham stated that although residents of Scarborough receive a clear signal from CFMS-FM, that station's programming is not geared to those residents. It added that CFMS-FM does not have any Scarborough advertisers and that the York market is bigger and more appealing to them.
9. In its intervention, Erin Community Radio (CHES-FM) argued the modification would infringe on its 0.5 mV/m contour, which would subsequently cause audience decline and affect advertising revenue. The NCRA submitted an intervention in support of its member station, CHES-FM, and the intervention related to the infringement of the proposed transmitter to CHES-FM's 0.5 mV/m contour. The NCRA opposed Radio Markham's technical amendment because the modification would negatively impact CHES-FM by increasing co-channel interference in areas where co-channel interference does not currently exist.
10. In reply to Erin Community Radio and the NCRA, Radio Markham stated that the proposed contours for the new transmitter would have a minimal impact on that station and would respect section 3.5.5 of the *BPR-3 - Application Procedures and Rules for FM Broadcasting Undertakings* relating to Overlapping Interference Zones. Radio Markham added that CHES-FM had already accepted interference in Broadcasting Decision 2016-189.
11. The Commission notes that the Department of Industry (also known as Innovation, Science and Economic Development Canada, and hereafter referred to as the Department), based on its review of the objections raised relating to potential additional zones of interference to incumbent stations, determined that while the realistic model does show additional small areas that could have additional interference, it is not significant enough to depart from the usual theoretical curve method described under the Department's *BPR-3 - Application Procedures and Rules for FM Broadcasting Undertakings*. Based on this and the commitment from Radio Markham to resolve interference within the interference free contour, the Department has overruled objections from Radio 1540 Limited, the licensee of CHIN-FM-1 and Erin Community Radio related to potential interference.

12. In its intervention, Durham Radio raised concerns about the location of the rebroadcasting transmitter, which would be outside the principal market that CFMS-FM is licensed to serve. Durham Radio argued that approval of the application in this location would undermine the integrity of the Commission's licensing process. This is discussed in more detail in the decision.

Regulatory framework

13. Pursuant to section 5 of the *Broadcasting Act* (the Act), the Commission is required to regulate and supervise all aspects of the Canadian broadcasting system with a view of implementing the broadcasting policy set out in subsection 3(1) and having regard to the regulatory policy set out in subsection 5(2).
14. The Commission has the authority, pursuant to subsection 9(1) of the Act, to issue licences for the carrying on of broadcasting undertakings, as well as to amend those licences.
15. When a radio licensee files an application for a technical change, including the addition of a rebroadcasting transmitter, the Commission expects the licensee to present compelling technical or economic evidence justifying the proposed technical change.

Issues

16. After examining the record for this application, in light of applicable regulations and policies, the Commission considers that the issues to be addressed are as follows:
- whether the licensee has demonstrated a compelling economic or technical need for the proposed rebroadcasting transmitter;
 - whether the proposed transmitter is an appropriate use of spectrum; and
 - whether approval of the proposed rebroadcasting transmitter would undermine the integrity of the Commission's licensing process.

Demonstration of an economic or technical need

Economic need

17. The applicant submitted that the proposed rebroadcasting transmitter is necessary to ensure its financial viability moving forward. The applicant stated that lost revenues from advertising accounts were due to poor signals in East Markham and that outside competitors have a better reach of its market. As a result, these stations have an advantage with advertisers resulting in the applicant's potential revenues being shared across more stations.
18. The Commission notes that evidence on the record demonstrates that the applicant shows a good ability to manage its income and expenses in the market it is currently serving, even with the denial of this application. Therefore, the Commission considers that insufficient evidence was submitted to demonstrate a compelling economic need.

19. In light of the above, the Commission finds that Radio Markham has not demonstrated a compelling economic need for the proposed rebroadcasting transmitter.

Technical need

20. When claiming a technical need, the Commission generally expects applicants to demonstrate a compelling technical need, for instance, by submitting evidence that approval of the requested technical changes will solve interference or reception issues that negatively impact the community that the station is licensed to serve or other technical issues.

21. The applicant indicated that its current coverage does not provide 3 mV/m and interference-free service to eastern Markham. In support of its application, the licensee filed a field measurement report showing signal levels in East Markham; however, the Commission observed that the signal levels noted were considered typical for the secondary 0.5 m/Vm contour.

22. The applicant also submitted 14 listener complaints to demonstrate signal deficiencies, however, those that could be mapped were from locations outside of the primary 3 mV/m contour. Additionally, Radio Markham filed the results of a consumer research survey showing that reception issues for the station were one of the main reasons why listeners were not tuning in. However, this survey did not specify the location of the population sampled, and therefore it was not clear if they were located within the station's primary contour.

23. The Commission notes that as part of the technical changes approved in Broadcasting Decision 2017-391, the Department had informed Radio Markham it would be accepting zones of interference that covered East Markham. Therefore, Radio Markham could have reasonably expected listeners in this area to have signal deficiencies.

24. In light of the above, the Commission finds that the applicant has not demonstrated a compelling technical need within the existing primary contour to support the need for the proposed rebroadcasting transmitter.

Appropriate use of spectrum

25. Radio Markham is proposing the use of a protected frequency in a region where frequencies are scarce. Further, the proposed frequency is one of the last known available frequencies available for the surrounding Ontario communities of Pickering and Scarborough.

26. Consequently, the Commission finds that the applicant's proposal for a rebroadcasting transmitter represents an inappropriate use of spectrum.

Integrity of the Commission's licensing process

27. When a licensee of a radio station files an application for a technical change, the licensee is generally expected to present evidence of a compelling technical or economic need justifying the technical changes.

28. However, the Commission has, as an exception to this general approach, approved applications that do not demonstrate a compelling technical or economic need where the particular circumstances of the licensee warrant, including where the applicant seeks to serve additional communities, when it is in the public interest to do so. Such applications are evaluated on a case-by-case basis and take into account the unique factors of each station's market.
29. The Commission approved Radio Markham's application for a broadcasting licence in Broadcasting Decision 2012-487 to serve Markham, following a competitive process where the Commission considered other applications to operate new radio services in Markham and Toronto. Currently, CFMS-FM is licensed to serve Markham and reaches parts of the cities of Richmond Hill and Vaughan in its primary 3 mV/m contour.
30. As mentioned in paragraph 12, Durham Radio submitted that Radio Markham is proposing to place the proposed rebroadcasting transmitter in the Durham region, which lies outside CFMS-FM's principal market of Markham, and that a majority of that station's additional coverage would therefore be in Durham. For this reason, Durham argued that approval of the present application would undermine the integrity of the Commission's licensing process.
31. In its reply to Durham Radio, Radio Markham submitted that it has always made it clear that CFMS-FM's goal is also to serve communities outside of Markham, namely Richmond Hill and Vaughan, as indicated in Broadcasting Decision 2012-487. Radio Markham reiterated, however, that its main objective for the proposed transmitter is to improve coverage in East Markham. As for Durham Radio's concern regarding the transmitter's location, Radio Markham indicated that the lack of other available transmitter sites forced it to select one in the Pickering area, and Radio Markham does not intend to serve Durham. This is demonstrated by the fact that CFMS-FM's programming centres are on York and Markham.
32. The Commission determined that if it were to approve the requested technical change, 46% of the proposed primary contour would be outside Markham and 100% would be outside the primary 3 mV/m contour of the existing station. Therefore, the proposed amendment would increase the station's primary contour. Any technical amendment to improve the station's signal should ensure that primary service to the Markham area is maintained to avoid undermining the original licensing process and to best serve interested listeners within the principal area that the station is licensed to serve, not to increase the service area. The Commission considers that the proposed technical change could potentially result in a backdoor expansion to a new market rather than serve as an improvement in service within its licensed market.
33. In light of the above, the Commission finds that the approval of this application would undermine the integrity of the Commission's licensing process.

Conclusion

34. The Commission must consider each application on its merits, based on the circumstances specific to the application. To consider a technical amendment appropriate, the applicant must demonstrate a compelling technical or economic need for the proposed technical

changes, and, in the case of alleged technical need, the Commission generally requires an applicant to submit evidence in support of its technical deficiencies. In this case, as explained above, the Commission finds that the evidence tendered by the applicant related more specifically to the signal levels in the station's secondary 0.5 mV/m contour, as opposed to within the station's primary 3 mV/m contour.

35. Overall, the applicant did not demonstrate a compelling economic or technical need, the proposed amendment does not represent an appropriate use of spectrum, and approval of the requested transmitter would undermine the Commission's licensing process.
36. In light of all of the above, the Commission **denies** the application by Radio Markham York Incorporated to amend the broadcasting licence for the English-language commercial radio programming undertaking CFMS-FM Markham to add an FM transmitter in Pickering.
37. Additionally, the Commission reminds the licensee of the importance of providing and maintaining service to the principal area of Markham, which CFMS-FM was originally licensed to serve.
38. The Commission recognizes the importance of serving communities with a diversity of languages and the potential ability of this licensee to help fill that need. Given that the application represents one of the last known remaining frequencies in this area and that the proposed amendment could result in an expansion of the applicant's licensed 3 mV/m contour, the Commission is of the view that a competitive process, as opposed to the technical amendment process, would be more appropriate. The Commission could open a competitive process in the future should it receive an application.

Secretary General

Related documents

- *CFMS-FM Markham – Technical Changes*, Broadcasting Decision CRTC 2017-391, 31 October 2017
- *CHES-FM Erin – Licence amendment and technical changes*, Broadcasting Decision CRTC 2016-189, 18 May 2016
- *Licensing of new radio stations to serve Scarborough and technical changes for existing radio stations serving Scarborough, Toronto and Whitchurch-Stouffville*, Broadcasting Decision CRTC 2014-574, 5 November 2014
- *Licensing of new radio stations to serve Markham*, Broadcasting Decision CRTC 2012-487, 11 September 2012