



Broadcasting Decision CRTC 2023-241

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Reference: 2022-331, 2022-331-1

Ottawa, 7 August 2023

Pickering College Campus Radio Newmarket, Ontario

Public record: 2020-0036-3

*Public hearing in the National Capital Region
23 February 2023*

English-language community FM radio station in Newmarket

Summary

The Commission **approves** an application for a broadcasting licence to operate an English-language community FM radio station in Newmarket, Ontario to replace its low-power English-language campus radio station CHOP-FM Newmarket.

Application

1. Pickering College Campus Radio (Pickering College) filed an application for a broadcasting licence to operate an English-language community FM radio station in Newmarket, Ontario.
2. The proposed station would operate at 102.7 MHz (channel 274A1) with an average effective radiated power (ERP) of 33.5 watts (maximum ERP of 100 watts, and an effective height of the antenna above average terrain [EHAAT] of 9 metres).
3. Pickering College is a not-for-profit corporation controlled by its board of directors, all of whom are Canadian. The applicant is therefore in compliance with the *Direction to the CRTC (Ineligibility of Non-Canadians)*¹ and is eligible to hold a broadcasting licence for a community radio station in Canada.
4. Pickering College is currently operating the low-power English-language campus radio station, CHOP-FM Newmarket, using the same frequency and the same transmission site as those proposed for the new community radio station. The applicant indicated that it would cease operating CHOP-FM as a low-power campus radio station upon the launch of the new community radio station. The applicant wishes to convert to a community radio station as CHOP-FM already plays an active role in the Newmarket community and seeks to increase its community programming and outreach in the area.

¹ SOR/97-192, 8 April 1997

5. During the school-year months, the total amount of community-created or hosted programming will equate to 95 hours a week, representing 75% of the broadcast week and the student created or hosted programming will equate to 31 hours a week, representing 25% of the broadcast week. In the summer months, the ratios of community-led or hosted programming will increase to 105 hours a week, representing 83% of the total programming schedule and 21 hours a week, representing 17% of the broadcast week for student created or hosted programming.
6. The station would broadcast 126 hours of programming per broadcast week, of which 100% would be devoted to local programming.
7. Pickering College proposed to dedicate four hours per broadcast week to news, of which 75% of this programming would be devoted to local news and 25% to regional news. Of that amount, three hours would consist of “pure news,” which excludes weather and sports bulletins. The applicant plans to use local volunteers to host their programs which relate to social, economic, and community issues and promote local talent.
8. In addition, the applicant stated that the music broadcast by the station would be a mix of alternative, rock, pop, classic rock, and jazz music, with a particular focus on independent and emerging artists.
9. The Commission received several interventions in support of this application. It also received interventions in opposition, from 8041393 Canada Inc. (8041393 Canada), licensee of the commercial ethnic radio station CJRK-FM Scarborough, Ontario, and CKDX Radio Limited (CKDX Radio), part of the Evanov group of licensees and licensee of the English-language commercial radio station CKDX-FM Newmarket, to which Pickering College replied. The concerns of the interveners are discussed throughout this decision.

Background

10. In Broadcasting Notice of Consultation 2021-378, the Commission announced that it had received an application by Pickering College for a broadcasting licence to operate an English-language community radio station that would replace its low-power FM campus station CHOP-FM Newmarket, Ontario.
11. In accordance with Broadcasting Regulatory Policy 2014-554, the Commission called for comments on the capacity of the Newmarket market to support a new station.
12. In Broadcasting Decision 2022-198, the Commission determined that the market of Newmarket cannot support an additional commercial radio station at this time. However, the Commission considered that community stations generally do not raise concerns pertaining to commercial impact. Given that no other parties expressed an interest in operating a community station in this market, the Commission published the application by Pickering College as part of the 23 February 2023 public hearing.

Regulatory framework

13. The Commission has the authority, pursuant to subsections 9(1) and 9.1(1) of the *Broadcasting Act*, to issue and renew licences and to make orders imposing conditions on the carrying on of a broadcasting undertaking that it considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*.
14. Pursuant to the Broadcasting Regulatory Policy 2010-499 (the Campus and Community Radio Policy), the Commission expects community radio stations to provide programming differing in style and substance from that provided by other elements of the broadcasting system, in particular, commercial radio stations and the Canadian Broadcasting Corporation (CBC). This programming should consist of music, especially Canadian music, not generally heard on commercial stations (including Special Interest Music and styles of popular music seldom broadcast), in-depth spoken word programs, and programs that target specific groups within the community.
15. Subparagraph 3(1)(d)(iii) of the *Broadcasting Act* states, in part, that the Canadian broadcasting system should reflect the equal rights, linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Indigenous peoples and languages within that society. In light of the above, as set out in the Campus and Community Radio Policy, the Commission expects campus and community stations to maintain and strengthen their efforts in these areas in their programming, volunteer involvement and in their employment practices.

Issues

16. 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 frequency 102.7 MHz by the applicant for its proposed station represents an appropriate use of spectrum;
 - whether the approval of the applicant would result in an undue economic impact on incumbent stations;
 - whether the proposed programming will be consistent with the Campus and Community Radio Policy; and
 - whether volunteer participation at the station will be an acceptable representation of the interests and needs of the community served.

Appropriate use of spectrum

17. In its intervention, 8041393 Canada argued that economic and frequency capacities are already saturated in Newmarket due to the proximity to the radio stations serving the Toronto market. It noted that CHOP-FM operates on the same frequency as CJRK-FM and that the proposed increase in power could affect its station by creating more interference.

18. In its reply to CJRK-FM, Pickering College stated that it had considered alternative channels, but indicated that these alternative frequencies would place them in a co-channel situation with other stations. It added that the technical parameters proposed in this application are the most appropriate to ensure the station's signal in the Newmarket area while interfering the least possible with neighboring stations' signals.
19. The applicant's proposal has received conditional technical acceptability from the Department of Industry (known as Innovation, Science and Economic Development Canada). Consequently, the proposal adheres to the rules governing FM spectrum coordination.
20. There is a frequency scarcity in Newmarket and the use of the proposed frequency would remove the one remaining frequency available that could provide service to Newmarket and the surrounding areas. However, based on its decision set out in Broadcasting Decision 2022-198, and given that no other parties expressed an interest in operating a community station in this market, the Commission finds that it would be appropriate to proceed with this application from Pickering College.
21. In light of the above, the Commission finds that the use of the frequency 102.7 MHz by the applicant for its proposed radio station represents an appropriate use of spectrum.

Economic impact on incumbent stations

22. The town of Newmarket is part of the larger Greater Toronto Area. It is located six kilometres north of the town of Aurora and approximately 50 kilometres north of Toronto's downtown core.
23. The proposed station would cover a large portion of the town of Newmarket, and its primary contour would serve a population of 48,020 within the primary (3.0 mV/m) contour and 141,151 within the secondary (0.5 mV/m) contour.
24. The proposed station's primary contour would have some overlap with the primary contours of 11 incumbent stations. Of the 11 incumbent stations, seven are commercial stations of which CKDX-FM is the only station licensed specifically to serve Newmarket.
25. The seven incumbent commercial stations that overlap with the proposed primary contour had an average profit before interest and tax (PBIT) margin of 32% between the 2018-2022 broadcast years. They also saw increases in local sales from \$24.8 million to \$32.8 million between 2021 and 2022 (32.1% increase).
26. The applicant projects that almost half of its total revenues will be generated from grants during the first seven years of operations. In year seven, the applicant projects \$95,200 in local sales which represents only 0.26% of total 2022 local sales generated by all commercial incumbent stations. Thus, the Commission has determined that there is no undue impact on the market as a whole.

27. The proposed contours would be encompassed entirely by the primary contour of CKDX-FM, the population in the overlapping area would account for a very small share of the population served by CKDX-FM (i.e., 11.4% of the population within CKDX-FM's primary contour).
28. In its intervention, CKDX-FM Radio stated that there is no market capacity in Newmarket to sustain an additional radio station. In its view, CHOP-FM is not a traditional community station given its history and ongoing participation of Pickering College in the operation of the station, including continuing to operate on the campus, the governance and administrative support linked to the educational institution, and its ability to benefit from grants. Additionally, it recommended imposing a condition of service² that would limit the station's maximum advertising time to 504 minutes per week, which would be similar to what is imposed on campus radio stations in the Campus and Community Radio Policy
29. In its reply, Pickering College stated that advertisement limits of 504 minutes per week are imposed on campus stations and, as a community radio station, its proposed station should not be subjected to these limits. Additionally, in its view, its modest advertising revenue projections pose little to no risk that CHOP-FM, as a community station, will have an impact on the advertising revenue of established commercial radio stations.
30. The Commission considers that community stations, being partially reliant on volunteers, grants and fundraising to ensure their viability, generally do not raise concerns pertaining to commercial impact.
31. In light of the above, the Commission finds that given the local sales advertisement revenue projected by the applicant, approval of this application would likely have minimal financial impact on CKDX-FM without compromising its viability.

Proposed programming

32. As set out in the Campus and Community Radio Policy, community radio stations:
- shall broadcast a minimum of 15% of spoken-word programs (content category 1) each broadcast week (for the purposes of this requirement, these programs shall be locally produced);
 - are not authorized to broadcast more than 80% of musical selections from content subcategory 21 (Pop, Rock and Dance) in order to provide a variety of musical selections broadcast that is not generally heard on commercial stations; and
 - are required to devote no less than 5% of its musical selections each broadcast week to selections drawn from content category 3 (Special Interest Music).

² Prior to 27 April 2023 these were referred to as conditions of licence under the old *Broadcasting Act*.

33. Each broadcast week, CHOP-FM would air 126 hours of radio programs hosted by community members and students, of which 100% would be devoted to local programming. Additionally, it plans to air four hours of news per broadcast week, including three hours of pure news.
34. Regarding music programming, the applicant indicated that 80% of the music aired would be drawn from content subcategory 21 (Pop, Rock and Dance). Although CHOP-FM's music programming proposal meets the standard condition of service ensuring that it devotes no less than 20% of its musical selections from content subcategories other than content subcategory 21, the Commission notes that most recently approved applications for new community radio stations have proposed to air between 15% and 40% of their music programming drawn from content subcategory 21, which allows for more opportunities for the station to provide exposure to a wide variety of musical genres and artists.
35. Pursuant to the Campus and Community Radio Policy, the Commission expects community radio stations to provide programming differing in style and substance from that provided by other elements of the broadcasting system, particularly commercial radio stations and the CBC. Such programming should consist of music, especially Canadian music, not generally heard on commercial stations (including special interest music, as well as styles of popular music seldom broadcast), in-depth spoken-word programming and programming targeted to specific groups within the community. In regard to the present application, the applicant proposed to devote 14% of its music programming to genres contained in content category 3 (Special Interest Music).
36. In its intervention 8041393 Canada proposed that, to avoid direct competition with CJRK-FM, the Commission impose a condition of service that would exclude the use of the Tamil language on the standard limit of no more than 15% of the weekly programming that can be allocated to ethnic-language programming on CHOP-FM, as is set out in the Campus and Community Radio Policy.
37. In its reply, Pickering College submitted that although it is not planning to air any third-language programming, there is no justification to commit to the weekly limitation of 15% of third-language programming that all community radio stations are entitled to air.
38. It is not common practice to impose a condition of service limiting the broadcast of third-language programming offered by a radio station when the applicant is not proposing any third-language programming. Furthermore, CJRK-FM's primary contour does not overlap with that proposed by CHOP-FM, and CJRK-FM is not licenced to serve Newmarket. Accordingly, the Commission will not impose a condition of service on the applicant related to third-language programming.
39. In light of the above, the Commission finds that the programming proposed by CHOP-FM is consistent with the Campus and Community Radio Policy and that it would serve Newmarket through a broad variety of programs focused on the community.

Volunteer participation at the station

40. In paragraph 12 of the Campus and Community Radio Policy, the Commission described community radio as distinguishing itself by virtue of its place in the communities served, reflection of the communities' needs and values, and the requirement for volunteers in programming and other aspects of station operations. This helps ensure that the programming is different from that of commercial and public radio in the same market.
41. Pickering College intends to mostly use local volunteers to host their programs. These programs relate to social, economic, and community issues, relevant to the community and promote local talent as artists may, not only perform live music, but have an outlet to speak to their community. In that regard, the proposed local spoken word programming would distinguish itself from that of the commercial radio stations and stations operated by the CBC that are available in Newmarket in both style and substance as envisioned by the Campus and Community Radio Policy.
42. The applicant submitted that it is seeking to recruit its future volunteers from outside the school to better represent the community and would provide adequate training and supervision of volunteers to ensure programming is compliant with the terms of the licence.
43. In light of the above, the Commission finds that the proposed level of volunteer participation is satisfactory.

Conclusion

44. In light of all of the above, the Commission approves the application by Pickering College for a broadcasting licence to operate an English-language community FM radio programming undertaking in Newmarket, Ontario, within its market defined by the boundaries of the station's primary (3.0 mV/m) contour, to replace its existing campus radio station.

Conditions of service

45. The Commission notes that there are standard conditions of service which apply to all undertakings of a particular class. In this case, the Commission considers it appropriate that the licensee should adhere to the standard conditions of service for community stations.
46. Accordingly, pursuant to subsection 9.1(1) the Commission **orders** Pickering College, by **condition of service**, to adhere to the standard conditions of service set out in *Standard conditions of licence for campus and community stations*, Broadcasting Regulatory Policy CRTC 2012-304 as well as all applicable requirements set out in the *Radio Regulations, 1986* (the Regulations), that were made under paragraph 10(1)(a) or under paragraph 10(1)(i) of the old *Broadcasting Act*.³

³ Pursuant to subsection 49(2) of the *Online Streaming Act*, which made a certain number of amendments to the *Broadcasting Act* when it came into force on 27 April 2023, any regulation made under paragraphs 10(1)(a) or 10(1)(i) of the old *Broadcasting Act* is deemed to be an order made under section 9.1 of the new *Broadcasting Act*.

47. Given that this application was filed and processed and the hearing held prior to the coming into force of the new *Broadcasting Act*, and that interested parties had an opportunity to comment on the issues as part of that process, the Commission considers this proceeding sufficient to achieve the purposes of the publication and consultation requirement set out in subsection 9.1(4) of the new *Broadcasting Act* in this case.
48. The terms as well as the specifics of the **conditions of service** are set out in the appendix to this decision.
49. The Commission notes that the formal broadcasting licence document issued to a licensee may set out additional requirements for the undertaking, relating to, for example, technical parameters or prohibitions on transfer. Pursuant to subsection 9(1) the licensee shall, therefore, also adhere to any such requirements set out in the broadcasting licence for the undertaking.

Licence revocation

50. Pursuant to paragraph 9(1)(f) and subsection 24(1) of the *Broadcasting Act*, the Commission will revoke the current broadcasting licence for CHOP-FM and issue a new licence when the Department of Industry (also known as Innovation, Science and Economic Development Canada) has confirmed that its technical requirements have been met, and when the applicant has informed the Commission in writing that it is ready to commence operation as a community station.

Reminders

51. The Commission has implemented obligations in respect of the broadcast of emergency alerts. For reference, see section 16 of the Regulations as well as Broadcasting Regulatory Policy 2014-444. Compliance involves implementing the public alerting system for each of the licensee's transmitters, and ensuring 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 applicable contour (as set out in paragraph 16(2)(b) of the Regulations) of the station as well as that of any rebroadcasting transmitter that may appear on the licence for that station.
52. As set out in the Campus and Community Radio Policy, campus and community radio stations should distinguish themselves from commercial radio stations and those operated by the CBC. Amongst other things, they play an important role in providing exposure to a wide variety of musical genres to the communities they serve, including from new and emerging artists and those from underserved cultural groups, namely ethnocultural minorities, Aboriginal peoples, and persons with disabilities. As a result, the Commission reminds the licensee to maintain and strengthen its support to a wide variety of musical genres in its music programming choices including to new and emerging artists and those from underserved cultural groups, namely ethnocultural minorities, Indigenous peoples, and persons with disabilities.

Secretary General

Related documents

- *Findings regarding market capacity in the Newmarket radio market*, Broadcasting Decision CRTC 2022-198, 27 July 2022
- *Call for comments on market capacity to serve Newmarket, Ontario, and call for applications to serve Newmarket, Ontario*, Broadcasting Notice of Consultation, CRTC 2021-378, 12 November 2021
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders - Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014
- *Standard conditions of licence for campus and community radio stations*, Broadcasting Regulatory Policy CRTC 2012-304, 22 May 2012
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2023-241

Terms, conditions of service, expectations and encouragement for the English-language community FM radio programming undertaking in Newmarket, Ontario

Terms

The licence will expire 31 August 2029.

The station will operate at 102.7 MHz (channel 274A1) with an average effective radiated power (ERP) of 33.5 watts (maximum ERP of 100 watts, and an effective height of the antenna above average terrain [EHAAT] of 9 meters).

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) 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 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 **7 August 2025**. 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 service

1. The licensee shall adhere to the conditions of service set out in *Standard conditions of licence for campus and community stations*, Broadcasting Regulatory Policy CRTC 2012-304, 22 May 2012. Further, the licensee shall adhere to the requirements as set out in the broadcasting licence for the undertaking.
2. The licensee shall adhere to all applicable requirements set out in the *Radio Regulations, 1986* that were made under paragraph 10(1)(a) or under paragraph 10(1)(i) of the old *Broadcasting Act*.⁴

Expectations

Cultural diversity

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

⁴ Pursuant to subsection 49(2) of the *Online Streaming Act*, which made a certain number of amendments to the *Broadcasting Act* when it came into force on 27 April 2023, any regulation made under paragraphs 10(1)(a) or 10(1)(i) of the old *Broadcasting Act* is deemed to be an order made under section 9.1 of the new *Broadcasting Act*.

Board of directors

As set out in *Campus and Community Radio Policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010 the Commission expects all community and campus licensees to file yearly updates on the composition of their boards of directors. These annual updates can be submitted at the time of filing of annual returns, following annual board of directors' elections, or at any other time. As noted in Appendix 3 to that policy, licensees may submit such documentation via the Commission's website.

Diversity of music

In order for the licensee to provide a wide diversity of musical genres as part of its music programming, the Commission expects the licensee to broadcast a significant percentage of music drawn from subcategories contained within content category 3 – special interest music⁵ to support Canadian artists creating music in those genres.

Encouragement

The Commission considers that campus radio and community radio stations should be particularly sensitive to employment equity in order to reflect fully the communities they serve. It encourages the licensee to consider these issues in its hiring practices and in all other aspects of its human resources management.

⁵ Content Category 3 – Special Interest Music subcategories include: Concert, Folk and folk-oriented, World beat and international, Jazz and blues, Non-classic religious, and Experimental music.