



Broadcasting Decision CRTC 2023-305

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References: Part 1 applications posted on 20 September 2022

Ottawa, 1 September 2023

8384827 Canada Inc.

Toronto, Mississauga and North York, Ontario

Public record: 2022-0704-2 and 2022-0687-0

CFXJ-FM Toronto – New transmitters in Mississauga and North York

Summary

The Commission **denies** two applications by 8384827 Canada Inc. to amend the broadcasting licence of the English-language commercial radio station CFXJ-FM Toronto, Ontario, in order to operate two rebroadcasting transmitters in Mississauga and North York.

Applications

1. 8384827 Canada Inc.¹ (Stingray) filed two applications to amend the broadcasting licence of the English-language commercial radio station CFXJ-FM Toronto, Ontario, in order to operate two rebroadcasting transmitters in Mississauga (2022-0704-2) and in North York (2022-0687-0).
2. The proposed rebroadcasting transmitter in Mississauga would operate at 93.5 MHz (channel 228A) with an average effective radiated power (ERP) of 3 watts (maximum ERP of 95 watts with an effective height of the antenna above average terrain [EHAAT] of 104.7 metres).
3. The proposed rebroadcasting transmitter in North York would also operate at 93.5 MHz (channel 228A) with an average ERP of 3 watts (maximum ERP of 95 watts with an EHAAT of 104.7 metres). Although the proposed transmitter location is in North York, the primary contour would allow the transmitter to serve populations within both North York and Richmond Hill, Ontario.²
4. Stingray stated that CFXJ-FM has experienced significant signal degradation over the past few years in the Toronto area as new high-rise development and population density have increased. It added that the audiences farther from the downtown core frequently have difficulty receiving the station's signal.

¹ 8384827 Canada Inc. is a wholly owned subsidiary of Stingray Radio Inc.

² The location was identified as Richmond Hill in the report on technical acceptability submitted by the Department of Industry (also known as Innovation, Science and Economic Development Canada).

5. Stingray proposed to utilize Single Frequency Networking (also known as MaxxCasting), a technology that uses synchronized repeaters on the same frequency to enhance signal quality within the station's authorized broadcast parameters.
6. Stingray indicated that it had investigated the option to increase power to the main transmitter at First Canadian Place in downtown Toronto to reinforce the weak signal strength in Mississauga and North York. However, the licensee stated that the following technical issues prohibit such a move:
 - CFXJ-FM is first or second adjacent to multiple radio stations in southern Ontario and western New York;
 - CFXJ-FM is at maximum output without interfering with these adjacent stations and, therefore, a power increase for the main transmitter is impossible; and
 - a search for a new frequency revealed a crowded spectrum in southern Ontario, with no available drop-in frequency that would improve coverage for CFXJ-FM in the Mississauga and North York regions.
7. Accordingly, Stingray indicated that the proposed rebroadcasting transmitters utilizing Single Frequency Networking would allow for CFXJ-FM's signal to be enhanced on its own frequency without the need to utilize an additional spot on the FM spectrum.

Intervention and reply

8. The Commission received one intervention in opposition to both applications from Dufferin Communications Inc. (Dufferin), the licensee of three radio stations in the Numeris Toronto Central Area (Toronto CTRL).
9. In its intervention, Dufferin stated that CFXJ-FM is licensed to serve the city of Toronto, which received adequate coverage with its existing station. Dufferin argued that the applications by the licensee are not intended to correct a technical deficiency, but to extend CFXJ-FM's primary contour signal strength into its secondary contour, into some of the most populous areas of Mississauga and towards York Region.
10. Dufferin stated that the extension of CFXJ-FM's primary (3 mV/m) contour signal into its secondary (0.5 mV/m) contour will result in significant coverage and population changes in CFXJ-FM's market and it is reasonable to expect that CFXJ-FM will monetize on such a large addition to its potential market audience.
11. In reply to the intervention, Stingray argued that the new secondary contour of each rebroadcasting transmitter will be enclosed within the licensed secondary contour, in areas where the signal is currently unusable due to new urban development. Stingray stated that its use of MaxxCasting technology is intended to serve its currently licensed contours, not to expand its service area.
12. In regard to Dufferin's assertion that the additional transmitters would have an undue impact on the incumbent stations in the market, Stingray stated that it found no evidence that its

proposal would impact any broadcaster. It further stated that no other radio licensee in the Greater Toronto Area filed comments on the applications.

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, in so doing, shall have regard to the regulatory policy set out in subsection 5(2).
14. The Commission has the authority, pursuant to subsections 9(1) and 9.1(1) of the Act, to issue licences for the carrying on of a broadcasting undertaking as well as to amend those licences.
15. When a licensee of a radio station files an application for technical changes, including the addition of a rebroadcasting transmitter, the Commission generally requires that the licensee present compelling technical or economic evidence justifying the 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.

Issues

16. 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 licensee has demonstrated a compelling technical need for the technical changes;
 - whether the proposed rebroadcasting transmitters represent an appropriate technical solution;
 - whether the proposed transmitters are an appropriate use of spectrum;
 - whether approval of the applications would have an undue financial impact on incumbent radio stations; and
 - whether approval of the applications would undermine the integrity of the Commission's licensing process.

Technical need for the proposed technical changes

17. The proposed rebroadcasting transmitter in Mississauga is located 22 kilometres west and the proposed rebroadcasting transmitter in North York is located 16.5 kilometres north of the originating radio station.
18. As noted above, Stingray proposed to add these rebroadcasting transmitters to address alleged signal deficiencies and signal degradation. Stingray stated that these deficiencies and

degradation have occurred as a result of new high-rise buildings that have been constructed. Stingray proposed to use on-channel boosters to remedy their signal strength issues.

19. In general, on-channel boosters work by attempting to synchronize the signal with the main transmitter and boosting the signal in as seamless a fashion as possible for listeners within the same frequency channel as the original transmitter.
20. The Commission defers to the determination of technical acceptability of the MaxxCasting technology received from the Department of Industry (also known as Innovation, Science and Economic Development Canada [ISED]), which did not make any distinction with respect to MaxxCasting technology and determined that the application was to establish and operate a new FM rebroadcasting transmitter. As such, the Commission does not differentiate MaxxCasting technology from other on-channel signal boosters in regard to the following analysis.
21. To demonstrate technical need due to signal deficiencies, the Commission generally expects licensees to demonstrate that these signal deficiencies are situated within their market, as defined by their primary contour.
22. In its applications, Stingray submitted field measurements to demonstrate signal deficiencies. While field measurements are generally sufficient to demonstrate a technical need, the areas with measured signal deficiencies submitted by Stingray are located outside the primary contour and outside the city of Toronto. Furthermore, the proposed rebroadcasting transmitters aim to address signal deficiencies outside the primary contour.
23. Consequently, the Commission finds that Stingray has not demonstrated a compelling technical need for the proposed technical changes.

Appropriate technical solution

24. In requesting technical changes to a radio station, the onus is on the applicant to demonstrate that the changes are appropriate on a technical basis.
25. Stingray indicated that it considered other potential technical solutions. However, as Stingray indicated in its application, CFXJ-FM is first or second adjacent to multiple radio stations in southern Ontario and western New York, making it impossible to increase its power without interfering with those stations. Further, there are no drop-in frequencies available to the licensee due to the crowded spectrum in southern Ontario.
26. The proposed solution to add on-channel rebroadcasting transmitters would expand the station's coverage beyond its existing primary contour, which would result in a significant increase to the population served. This solution also represents an extension of CFXJ-FM's primary contour and, subsequently, its market, into Mississauga and North York.
27. Stingray stated that its goal is to ensure that CFXJ-FM can achieve the coverage up to its secondary contour. While the Commission acknowledges that the proposals would improve coverage within the station's secondary contour, the solution is inappropriate as it does not

seek to address deficiencies within the primary contour and would result in a service expansion of CFXJ-FM's primary contour beyond the area it is licensed to primarily serve.

28. In light of the above, the Commission finds that Stingray's proposals for rebroadcasting transmitters do not constitute an appropriate technical solution for better serving CFXJ-FM's originally targeted listeners within its primary contour.

Appropriate use of spectrum

29. Stingray is not proposing the use of an alternate frequency and the proposal would not impact the availability of frequencies in adjacent markets.
30. Furthermore, the licensee's proposal has received conditional technical acceptability from ISED. Consequently, the proposals adhere to the rules governing FM spectrum coordination.
31. In light of the above, the Commission finds that the requested technical changes represent an appropriate use of spectrum.

Financial impact on incumbent stations

32. CFXJ-FM is a radio station licensed to serve the city of Toronto, the largest and most diverse radio market in Canada with 25 English-language commercial radio stations, 12 commercial ethnic radio stations as well as numerous public, community, campus and Indigenous radio stations.
33. In regard to Dufferin's intervention, the Commission notes that the *Radio Regulations, 1986* define the principal market of an FM station as the station's primary contour or the central area as defined by the Bureau of Broadcast Measurement (now Numeris), whichever is smaller. In CFXJ-FM's case, the market would be its primary contour.
34. The approval of the proposed rebroadcasting transmitters would allow CFXJ-FM's primary contour to enter the Mississauga and North York markets, which it is not licensed to serve. This could potentially result in a "backdoor entry" into adjacent markets rather than serve as an improvement in service within its licensed market.
35. There is no direct overlap between the primary contours of the proposed rebroadcasting transmitters and any of the Dufferin radio stations in the Toronto CTRL. While this would imply that there would be no explicit adverse impact on other radio stations in the Toronto CTRL, the Commission is of the view that approval of the proposed applications could still result in adverse impact on these stations since CFXJ-FM could increase listenership among audiences outside of its designated market who frequently commute within its designated market. The Commission finds that this would give CFXJ-FM a distinct competitive advantage over other stations in the market.
36. In light of the above, the Commission finds that approval of the requested technical changes could have an undue financial impact on incumbent stations.

Integrity of the Commission's licensing process

37. When a licensee of a radio station files an application for a technical amendment, the licensee is generally expected to present rationale and evidence of a technical or economic need that justifies the technical changes. This is because absent said justification, or absent justification that an exception in the public interest is warranted, the station would have to go through the typical licensing process to apply for a new station that serves the new market.
38. As noted above, the proposed technical solution would not exclusively address deficiencies in the station's primary contour and would allow for the station to expand its coverage outside of the area that it was originally licensed to serve.
39. Further, Stingray did not demonstrate that an exception to the Commission's general approach to technical amendments is warranted or would be in the public interest, nor did it address the potential inappropriateness of the proposed solution. The Commission is of the view that approval of the two applications would allow the station to gain a better access to Mississauga and North York without the more rigorous analysis accompanied by the licensing process for serving a new market.
40. In light of the above, the Commission finds that approval of the present application would undermine the integrity of the Commission's licensing process.

Conclusion

41. In light of all the above, the Commission **denies** the applications by 8384827 Canada Inc. to amend the broadcasting licence of the English-language commercial radio programming undertaking CFXJ-FM Toronto, in order to operate two rebroadcasting transmitters in Mississauga and North York.

Secretary General