



Broadcasting Decision CRTC 2006-95

Ottawa, 27 March 2006

Aboriginal Voices Radio Inc.

Vancouver and Abbotsford, British Columbia; Calgary, Alberta;
Ottawa, Ontario/Gatineau, Quebec; and Montréal, Quebec

Application 2005-1468-9

Broadcasting Public Notice CRTC 2005-118

8 December 2005

Deadline to commence operations

*The Commission **approves in part** an application by Aboriginal Voices Radio Inc. (AVR) for an extension of the time limits imposed on it with respect to the native Type B FM radio stations authorized to serve Vancouver with a transmitter in Abbotsford, Calgary, Ottawa/Gatineau and Montréal, respectively. AVR had requested an extension to 1 September 2006 for each undertaking.*

The Commission extends, to 30 June 2006, the deadline for AVR to file an application for the use of a frequency other than 90.9 MHz in Vancouver and to commence operation of the radio station authorized to serve Vancouver with a transmitter in Abbotsford; and to commence operation of the radio stations authorized to serve Calgary and Ottawa/Gatineau, respectively. This is the final extension to be granted by the Commission for these undertakings.

Subsequent to filing the present application, AVR filed another application for the use of a frequency other than 100.1 MHz for the radio station authorized to serve Montréal. Accordingly, the Commission finds that there is no need to extend the deadline for AVR to file an application in this regard. The Commission extends, to 1 September 2006, the deadline to commence operation of the Montréal radio station.

The application

1. The Commission received an application by Aboriginal Voices Radio Inc. (AVR) for an extension, to 1 September 2006, of the time limit to:
 - file an application for the use of a frequency other than 90.9 MHz in Vancouver and to commence operation of the native Type B FM radio programming undertaking authorized in *New Aboriginal-language radio station to serve Vancouver approved in part*, Decision CRTC 2001-314, 5 June 2001 (Decision 2001-314), and its transmitter authorized in *New transmitter in Abbotsford*, Broadcasting Decision CRTC 2003-67, 21 February 2003 (Decision 2003-67);

- commence operation of the native Type B FM radio programming undertaking authorized in *Three new radio stations to serve Calgary*, Decision CRTC 2001-172, 12 March 2001 (Decision 2001-172);
- commence operation of the native Type B FM radio programming undertaking authorized in *New native FM station to serve the Ottawa-Hull region*, Decision CRTC 2001-627, 4 October 2001 (Decision 2001-627); and
- file an application for the use of a frequency other than 100.1 MHz in Montréal and commence operation of the native Type B FM radio programming undertaking authorized in *Native FM radio station in Montréal*, Broadcasting Decision CRTC 2003-195, 2 July 2003 (Decision 2003-195).

Background

2. The Commission's most recent extension to the deadline to commence operation of the undertakings authorized to serve Vancouver and Abbotsford, Calgary, and Ottawa/Gatineau, respectively, was approved in *Deadline to commence operations*, Broadcasting Decision CRTC 2005-330, 19 July 2005 (Decision 2005-330). Prior to Decision 2005-330, the Commission granted AVR three extensions for the Vancouver radio station¹; three extensions for the Calgary radio station²; and four extensions for the Ottawa/Gatineau radio station³.
3. In Decision 2005-330, the Commission put AVR on notice that another application requesting an extension of the time limit to commence operation of any of these undertakings must include a detailed report providing information on its progress and clearly illustrating that the implementation of the undertaking would be imminent. The Commission also put AVR on notice that failure to commence operation of the undertakings authorized in Decision 2001-314, Decision 2003-67, Decision 2001-172, and Decision 2001-627 within a reasonable period of time would cause the authority granted in the relevant decision to become null and void.

¹ Broadcasting Decision CRTC 2002-172, 3 July 2002, granted a twelve-month extension. Broadcasting Decision CRTC 2003-189, 16 June 2003, granted another twelve-month extension. Broadcasting Decision CRTC 2004-292, 23 July 2004, granted a six-month extension.

² Broadcasting Decision CRTC 2002-107, 22 April 2002, granted a twelve-month extension. Broadcasting Decision CRTC 2003-97, 14 March 2003, granted a six-month extension. Broadcasting Decision CRTC 2003-583, 20 November 2003, granted a twelve-month extension.

³ Broadcasting Decision CRTC 2002-312, 16 October 2002, granted a nine-month extension. Broadcasting Decision CRTC 2003-424, 27 August 2003, granted a four-month extension. Broadcasting Decision CRTC 2003-567, 14 November 2003, granted a five-month extension. Broadcasting Decision CRTC 2004-264, 9 July 2004, granted a six-month extension.

4. The Commission has also granted AVR five extensions to the time limit to file an application for an alternate frequency for the Montréal radio station⁴ and one extension to the deadline to commence operation of that radio station.⁵

Applicant's rationale for the present application

5. In support of its present application, AVR submitted that it has been unable to implement these radio undertakings primarily for technical and logistic reasons. AVR provided the following status reports:
 - in Vancouver, it is currently examining alternate frequencies that would be available for its radio station in that city;
 - in Calgary, it is exploring an offer by the TsuuT'ina First Nation that would allow AVR to establish a transmitter tower for its Calgary radio station on the TsuuT'ina First Nation's territory at no charge;
 - in Ottawa/Gatineau, it is negotiating a lease agreement with CHUM Limited for the use of a transmitter tower for AVR's Ottawa/Gatineau radio station; and
 - in Montréal, it indicated its commitment to file a technical brief with the Department of Industry (the Department) and an application with the Commission for the use of 106.7 MHz for the radio station in that city.

Interventions

6. The Commission received interventions in connection with this application, most of which were in opposition.
7. Rogers Broadcasting Limited (Rogers) indicated that it did not oppose AVR's request for an extension to the deadlines to commence operation of the radio undertakings noted above. However, Rogers submitted that AVR has indicated its intent to file an application for the use of 92.3 MHz for its Vancouver radio station. Rogers noted that its transmitter CKCL-FM-1 Abbotsford operates at 92.5 MHz, the first adjacent channel to 92.3 MHz. If AVR were authorized to operate at 92.3 MHz, Rogers anticipated significant interference to CKCL-FM-1, and suggested that AVR consider another frequency, such as 106.3 MHz.

⁴ Broadcasting Decision CRTC 2004-118, 18 March 2004, granted a six-month extension. Broadcasting Decision CRTC 2004-359, 19 August 2004 granted a three-month extension. Broadcasting Decision CRTC 2005-18, 26 January 2005, granted a six-month extension. Broadcasting Decision 2005-213, 24 May 2005, granted a three-month extension. Broadcasting Decision CRTC 2005-321, 8 July 2005 granted a six-month extension.

⁵ Broadcasting Decision CRTC 2005-212, 24 May 2005 granted a six-month extension.

8. For its part, the Canadian Broadcasting Corporation (CBC) expressed concern that the use of 92.3 MHz by AVR's Vancouver radio station would be technically mutually exclusive with the CBC's transmitter, CBU-FM-1 Victoria, located on Saltspring Island, which operates at 92.1 MHz. The CBC suggested that AVR should file an application with the Commission to operate its Vancouver radio station at 106.3 MHz.
9. The Alliance des radios communautaires du Canada (ARC) expressed the opinion that approval of this application would not guarantee that AVR would implement these radio stations. In ARC's view, AVR has been granted sufficient time to commence operation of these radio stations and the frequencies should be made available to other parties who wish to file applications, as part of a competitive public process, to obtain broadcasting licences to provide radio services.
10. Atelier Radio Enfant contended that AVR has been unable to implement these radio stations because of financial limitations, not for technical or logistical reasons, as claimed in its application.
11. Mr. Eric Cartman questioned the legitimacy of granting AVR yet another extension to the deadline to commence operation of these radio stations. According to Mr. Cartman, the Commission would not extend similar leniency to other broadcasters.

Applicant's replies

12. In response, AVR stated that its original plan for its national radio service had been to establish and maintain a radio station in Toronto before expanding across Canada. However, the scarcity of frequencies and the numerous competitive licensing processes over the past five to seven years prompted AVR to file applications with the Commission for radio stations in other cities before its Toronto radio station had achieved sustained viability.
13. AVR submitted that the extensions granted by the Commission to the deadlines to implement the radio stations outside Toronto are justified given the "historic difficulties Aboriginal people have faced in attempting to heal themselves and build capacity." AVR further maintained that there is a need for resources in urban centres to support Aboriginal peoples, and that its national radio service would help Aboriginal peoples to "overcome the legacy of nearly a century of marginalization."
14. In response to Rogers and the CBC, AVR stated that it has engaged a consulting engineer to prepare a technical brief regarding a frequency for the Vancouver radio station. AVR stated that, upon completion of that technical brief, it would file an application with the Commission proposing a frequency for its Vancouver radio station. Accordingly, in AVR's view, the concerns raised by Rogers and the CBC are premature.

Commission's analysis and determination

15. In its evaluation of this application, the Commission has considered the views expressed by the opposing interveners and AVR's replies.
16. The Commission has also considered this application against the background of section 3(d)(iii) of the *Broadcasting Act* (the Act), which states that "the Canadian broadcasting system should, through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations of Canadian men, women and children ... and the special place of aboriginal peoples within that society."
17. At the same time, the Commission is mindful that over-the-air radio undertakings use over-the-air frequencies that are public property and limited in number by the radio spectrum. For this reason, the Commission requires parties that have been successful in obtaining authority to operate a radio undertaking to commence operation of the proposed service as soon as possible and no later than 24 months from the date of the licensing decision. While the Commission does consider applications for an extension of the 24-month deadline to commence operations, it expects undertakings to be implemented within a reasonable time.
18. The Commission considers that the radio stations proposed by AVR would contribute to the objectives of section 3(d)(iii) of the Act, by addressing the needs, interests and concerns of Aboriginal peoples, particularly those living in urban areas. In the Commission's view, however, it has extended considerable leniency to AVR in granting numerous extensions to the deadlines to file an application for an alternate frequency for the Vancouver radio station and to commence operation of that station and its transmitter in Abbotsford; to commence operation of the radio stations authorized to serve Calgary and Ottawa/Gatineau, respectively; and to file an application for an alternative frequency for the Montréal radio station. Furthermore, the Commission notes that the authority granted to AVR to operate radio stations in Vancouver with a transmitter in Abbotsford, in Calgary and in Ottawa/Gatineau, respectively, will expire 31 August 2006. In the event that any of these undertakings were not implemented before 31 August 2006, there would be no broadcasting licence for the Commission to renew.
19. In light of all of the above, the Commission **approves in part** the application by Aboriginal Voices Radio Inc. The Commission finds that it is appropriate to grant a final extension, to 30 June 2006, of the deadline to file an application for the use of a frequency other than 90.9 MHz in Vancouver and to commence operation of the native Type B FM radio programming undertaking authorized to serve Vancouver with a transmitter in Abbotsford, and to commence operation of the native Type B FM radio programming undertakings authorized to serve Calgary and Ottawa/Gatineau, respectively.

20. The Commission reiterates that this is the final extension to be granted with respect to the radio undertakings authorized to serve Vancouver and Abbotsford, Calgary and Ottawa/Gatineau, respectively.
21. The Commission notes that AVR recently filed a subsequent application with the Commission, which has not yet been announced in a Broadcasting Public Notice, requesting the use of a frequency other than 100.1 MHz for the native Type B FM radio programming undertaking authorized to serve Montréal. Accordingly, the Commission finds that there is no need to extend AVR's deadline in this regard. The Commission extends, to 1 September 2006, the deadline to commence operation of the Montréal radio station.

Issuance of the licences

22. The licences for the undertakings authorized to serve Vancouver and Abbotsford, Calgary, Ottawa/Gatineau, and Montréal, respectively, will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The authority granted in Decision 2001-314 for a radio station to serve Vancouver, in Decision 2003-67 for a transmitter in Abbotsford, in Decision 2001-172 for a radio station to serve Calgary and in Decision 2001-627 for a radio station to serve Ottawa/Gatineau will become null and void should the applicant fail to meet the new implementation deadline set out above for the respective undertaking.

Secretary General

This decision is to be appended to each licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>