



Broadcasting Decision CRTC 2010-42

Route reference: 2009-461

Additional reference: 2009-461-4

Ottawa, 28 January 2010

591989 B.C. Ltd.
Guelph, Ontario

*Application 2009-0766-0, received 19 May 2009
Public Hearing in the National Capital Region
29 October 2009*

CJOY Guelph – Conversion to the FM Band

*The Commission **denies** an application by 591989 B.C. Ltd. to convert CJOY Guelph from the AM to the FM band. Approval of the application would require an exception to the common ownership policy, and the Commission does not consider that an exception is warranted in this case.*

Introduction

1. The Commission received an application by 591989 B.C. Ltd., a corporation ultimately controlled by Corus Entertainment Inc. (Corus), to convert the English-language commercial radio programming undertaking CJOY Guelph from the AM to the FM band. The new station would operate at 95.7 MHz (channel 239B) with an average effective radiated power of 9,500 watts. The applicant indicated that it would continue to offer CJOY's Oldies music format on the proposed FM station.
2. The applicant also requested approval to operate under a condition of the current licence for CJOY set out in Broadcasting Decision 2006-398. This condition of licence authorizes CJOY to broadcast a minimum level of 30% Canadian musical selections in any broadcast week where at least 90% of the musical selections from content category 2 that it broadcasts are selections that were released before 1 January 1981.
3. The applicant further requested permission to simulcast the programming of the new FM station on CJOY for a period of three months from the date of implementation of the new FM station. At the end of the simulcast period, the licence for CJOY would be revoked, pursuant to sections 9(1)(e) and 24(1) of the *Broadcasting Act*.
4. Approval of the application would require an exception to the Commission's common ownership policy for radio, and the applicant requested that the Commission grant such an exception.

5. The Commission received interventions in support of the application from public officials, members of the business community, and local organizations and service clubs who noted the high level of community service that CJOY provides to Guelph. The Commission also received opposing interventions from Durham Radio Inc. (Durham Radio) and Wayne Plunkett, a broadcast consultant, which are addressed below. The complete record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

6. The Commission finds that the first issue to be considered in this proceeding is whether it should grant the applicant an exception to its common ownership policy for radio which is set out in Public Notice 1998-41 and cited in the Commission's diversity of voices policy set out in Broadcasting Public Notice 2008-4. If the Commission were to decide that an exception should be not granted, it would not be necessary to consider other issues raised by the application.

The common ownership policy

7. The common ownership policy provides that, in markets (such as Guelph) with fewer than eight commercial radio stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band.
8. In addition to AM station CJOY, Corus currently operates three FM stations whose 3 mV/m contours cover the Guelph market as defined by BBM Canada. These stations include CIMJ-FM Guelph and CJDV-FM in the adjacent city of Cambridge. Further, as a function of its strong signal, the 3 mV/m contour of the Corus station CING-FM Hamilton also enters the Guelph market. Thus, Corus already exceeds the three station limit for total AM and FM stations as well as the limit of two stations in any one frequency band set out in the common ownership policy. Approval of the current application would add a fourth Corus FM station to the market.

Applicant's position

9. In support of its request for an exception to the common ownership policy, the applicant noted that CJOY has operated in Guelph for many years and provides extensive service to the community. It indicated, however, that there are a number of factors that have led to a decline in CJOY's revenue and profitability and jeopardize its continued viability as an AM operation. These factors include a general shift of tuning from the AM to the FM band and extensive competition from out-of-market FM stations. The applicant further noted that the Commission's removal of restrictions on the use of hits by FM stations has created new competition for AM stations such as CJOY that offer an Oldies format.
10. The applicant further argued that its proposed use of 95.7 MHz constitutes an efficient use of frequency spectrum. It submitted that 95.7 MHz can be used only by Corus radio stations since it is short-spaced to the frequencies of other FM stations owned by Corus.

Concerns of opposing interveners and the applicant's response

11. Durham Radio noted that eight Corus stations from Guelph, Kitchener/Cambridge, Hamilton and Toronto receive notable shares of tuning in Guelph. These include not only the four stations mentioned above but other Corus stations that put less powerful signals into the market and are still receivable.¹ Durham Radio expressed concern that approval of the application would tighten Corus' hold on the Guelph market. The intervener was further concerned that allowing CJOY to convert to an FM frequency would enable CJOY to adopt a programming format researched by applicants at the October 2008 Cambridge public hearing. Those applications for new FM stations to serve Guelph, as the application by CJOY to convert to the FM band, were denied by the Commission in Broadcasting Decision 2009-31. As a result, Durham Radio was concerned that approval of the application would make it impossible for a new competitor to establish a successful radio station in Guelph in the future.
12. Wayne Plunkett also considered that the application should be denied, noting that Corus stations already dominate listening in Guelph and Wellington County. Mr. Plunkett further submitted that the Guelph situation is not unique, noting that there are many other nearby markets, such as Kitchener, Hamilton and London where long-standing or "heritage" AM stations cannot convert to the FM band because of the Commission's common ownership policy.
13. In reply to the interveners, Corus re-iterated many of the arguments set out in its application, emphasizing that this application involves the conversion of an existing station to the FM band, not the introduction of a new station, and that the proposed station would use a frequency would not be available to another applicant for technical reasons. Corus further stated that it would maintain CJOY's Oldies format with only minor changes. The applicant maintained that conversion to the FM band was necessary to ensure CJOY's viability.

Discussion

14. The common ownership policy plays an important role in ensuring that a diversity of radio voices is available to listeners and the Commission has rarely granted exceptions. These exceptions include the markets of Windsor, Ontario and St. John's, Newfoundland and Labrador. Under the Commission's common ownership policy, a licensee in either Windsor or St. John's would normally be limited to controlling a maximum of three radio stations in one language, with a maximum of two stations in any frequency band.
15. In Windsor, where it operates two AM stations and two FM stations, CTVglobemedia Inc. was permitted to continue with an exception first granted to CHUM Limited.² The Windsor exception was based on the severe economic challenges faced by Canadian radio operators, given Windsor's proximity to the large Detroit market. In St. John's the Commission approved an application by Newcap Inc. (Newcap) to acquire VOXM and

¹ The other stations are CKBT-FM Kitchener, CJXY-FM Burlington, CFNY-FM Toronto and CILQ-FM Toronto.

² See Decision 85-666.

VOCM-FM.³ This expanded Newcap's ownership position in the market to two AM stations and two FM stations. The St. John's exception was on the basis that the Newfoundland radio market and the province's economy as a whole presented a special set of circumstances.

16. The Commission notes, however, that it has never approved an application that would allow a licensee to control four FM stations in one language in a market with fewer than eight commercial radio stations, as is the case with the current application.
17. The Commission is of the view that exceptions to the common ownership policy should only be granted when there is a need to address clearly defined and demonstrated technical issues, or where there is a clearly demonstrated economic need that affects the future financial viability of existing radio stations in the relevant market.
18. In this case Corus has not identified any technical issues related to the coverage of the Guelph market by CJOY. Further, the Commission is not convinced that Corus has provided compelling evidence that there is a clearly demonstrated economic need that affects Corus' ability to continue operations in the Guelph market. The Commission is also of the view that approval of this exception would make it very difficult for a new radio player to enter and compete in the Guelph market.
19. Accordingly, the Commission **denies** the application by 591989 B.C. Ltd. to convert the English-language commercial radio programming undertaking CJOY Guelph from the AM to the FM band.

Secretary General

Related documents

- *Licensing of new radio stations to serve Guelph, Ontario*, Broadcasting Decision CRTC 2009-31, 23 January 2009
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *CJOY Guelph – Licence renewal*, Broadcasting Decision CRTC 2006-398, 24 August 2006
- *Transfer of the ownership and control of VOCM and VOCM-FM St. John's, and of five other radio stations in Newfoundland*, Decision CRTC 2000-141, 4 May 2000

³ See Decision 2000-141.

- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998
- Decision CRTC 85-66, 19 August 1985

This decision 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>.