



## Broadcasting Decision CRTC 2008-343

Ottawa, 5 December 2008

**3937844 Canada Inc.**

Wainwright, Alberta

*Application 2008-0545-0, received 11 April 2008*

*Public Hearing in the National Capital Region*

*24 September 2008*

### **CKKY Wainwright – Conversion to FM band**

*The Commission **denies** the application by 3937844 Canada Inc., a subsidiary of Newcap Inc., for a broadcasting licence to operate a new FM radio station in Wainwright, Alberta, to replace its AM station CKKY.*

### **Introduction**

1. The Commission received an application by 3937844 Canada Inc. (3937844 Canada), a subsidiary of Newcap Inc. (Newcap), for a broadcasting licence to operate a new English-language FM radio programming undertaking in Wainwright, Alberta, to replace its AM station CKKY. The new radio station would operate on frequency 101.9 MHz (channel 270C1) with an effective radiated power of 100,000 watts.
2. Newcap stated that it wished to provide a high quality FM stereo service to Wainwright and surrounding areas. It also indicated that the proposed FM radio station would continue to offer CKKY's current Country music format.
3. Newcap owns and operates CKSA-FM and CILR-FM Lloydminster, Alberta, and, through 3937844 Canada, CKWY-FM Wainwright. Lloydminster lies about 70 kilometres northeast of Wainwright. In its application, the licensee noted that the transmitter for the proposed FM radio station would be co-sited on the transmitting tower of CKWY-FM, which is located about 30 kilometres northeast of Wainwright.
4. The Commission received an intervention in opposition to this application from 912038 Alberta Ltd. (912038 Alberta), who, at the time the intervention was received by the Commission, was the licensee of CFNA-FM Bonnyville and CKLM-FM Lloydminster, Alberta.<sup>1</sup> The intervention and the licensee's reply to the intervention can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

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<sup>1</sup> In Broadcasting Decision 2008-323, the Commission approved the acquisition of CFNA-FM and CKLM-FM by Vista Radio Ltd.

## Commission's analysis and determinations

5. After examining the application, the intervention and the licensee's reply to the intervention, the Commission considers that the primary issue to be determined relates to whether approval of the present application would be consistent with the Commission's Common Ownership Policy. The Commission also has a concern relating to the potential for the proposed station to compete for listeners and advertisers in the Lloydminster radio market.

### The Commission's Common Ownership Policy

6. As set out in Public Notice 1998-41, and reaffirmed in Broadcasting Public Notice 2008-4, the Commission's Common Ownership Policy permits the ownership by a licensee of no more than three stations in a given language in markets where fewer than eight commercial stations are operating in that language, with a maximum of two stations in any one frequency band.
7. In the case of an FM station, a "market" is defined in section 2 of the *Radio Regulations, 1986* as "the F.M. 3mV/m contour [of a station] or the central area as defined by the Bureau of Broadcast Measurement (BBM), whichever is smaller." For the purpose of evaluating the present application under its Common Ownership Policy, given the absence of a central area, as defined by BBM Canada, for Wainwright and Lloydminster, the Commission has determined that the affected markets are best defined by the respective 3mV/m contours of the above-noted radio stations in those localities.
8. In reply to a letter from the Commission regarding the possibility that approval of the present application would not be in line with its Common Ownership Policy, Newcap described as "small" the potential overlap of the 3mV/m contours of both the proposed station and CKWY-FM with the 3mV/m contour of CKSA-FM. However, the Commission considers the potential overlap to be significant, such that approval of the present application would give Newcap three FM stations in the Lloydminster market. As this would exceed the limit of two FM stations on the same band that this licensee may hold in the market, approval of the present application to convert CKKY to the FM band would require an exception to the Commission's Common Ownership Policy.
9. The Commission has approved exceptions to its Common Ownership Policy in the past.<sup>2</sup> However, to promote diversity in radio markets, the Commission considers that it should grant such exceptions only when a licensee clearly demonstrates economic need as it pertains to the future financial viability of its existing radio stations in the relevant market, or the need to address clearly defined and demonstrated technical issues. The Commission notes that the onus falls on the licensee to demonstrate such economic or technical need.

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<sup>2</sup> See, for example, Broadcasting Decision 2008-101 and Decision 2000-141.

10. The licensee argued that the proposed conversion of CKKY to the FM band would permit it to provide high quality FM service to listeners in and around Wainwright. However, it failed to provide evidence of economic or technical need that would support the granting of an exception to the Commission's Common Ownership Policy. Accordingly, the Commission does not consider that such an exception would be warranted in the present case.
11. In its reply to the intervention by 912038 Alberta, Newcap indicated that by co-siting the new FM station on its existing transmission tower for CKWY-FM, it would be able to make efficient use of its existing facilities as well as address the fact that it is impossible to completely duplicate the coverage provided by the current AM signal on the FM signal. Although the Commission encourages the efficient use of broadcast facilities, it notes that the overlap between the signal of the proposed station with those of the Lloydminster radio stations stems from the licensee's plan to co-site the transmitter for the new FM radio station on the transmission tower for CKWY-FM and share that station's antenna. The Commission considers that there are alternative technical solutions that would enable the licensee to improve the signal of CKKY and not contravene the Commission's Common Ownership Policy.

**Competition for listeners and advertisers in Lloydminster**

12. 912038 Alberta, in its intervention, did not oppose the conversion of CKKY to the FM band, but did oppose the technical parameters proposed to effect the conversion. It argued that the 3mV/m signal contour of the proposed FM radio station would significantly shift CKKY's existing coverage away from the station's licensed Wainwright service area and towards Lloydminster, making it a competitor for listeners and advertisers in that city.
13. In reply to the intervention, Newcap stated that the proposed station's 3mV/m signal contour completely encompasses Wainwright and does not enter Lloydminster, which would allow CKKY-FM to remain a Wainwright station.
14. The Commission notes that the coverage area of the proposed FM station would extend the station's signal into the Lloydminster radio market and considers that this could potentially make it a competitor for listeners and advertisers in that market. Given that the reasoning behind Newcap's proposal was to provide a high quality FM stereo service to Wainwright and the surrounding areas, the Commission is of the view that an FM station designed to replace CKKY should have a coverage area that more closely replicates that of the AM station's existing coverage and as such continues to provide service to the same localities and the same population size.

## Conclusion

15. Since approval of the present application would be inconsistent with the Commission's Common Ownership Policy; since the applicant has not provided justification for an exemption to that policy; and given that the proposed FM radio station for Wainwright could potentially compete for listeners and advertisers in the Lloydminster radio market, the Commission **denies** the application by 3937844 Canada Inc., a subsidiary of Newcap Inc., for a broadcasting licence to operate a new English-language FM radio programming undertaking in Wainwright, Alberta, to replace its AM station CKKY.

Secretary General

## Related documents

- *CFNA-FM Bonnyville and CKLM-FM Lloydminster – Acquisition of assets*, Broadcasting Decision CRTC 2008-323, 21 November 2008
- *Licensing of new radio stations to serve Windsor, Ontario*, Broadcasting Decision CRTC 2008-101, 9 May 2008
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Transfer of the ownership of VOCM and VOCM-FM St. John's, and of five other radio stations in Newfoundland*, Decision CRTC 2000-141, 4 May 2000
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998

*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>.*