



Broadcasting Decision CRTC 2015-359

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References: Part 1 applications posted on 25 September and 30 October 2014

Ottawa, 7 August 2015

Four Senses Entertainment Inc.
Whistler, British Columbia

Corus Premium Television Ltd.
New Westminster, British Columbia

Applications 2014-0964-9 and 2014-1106-6

CKEE-FM Whistler and CKNW New Westminster – Addition of transmitters

*The Commission **denies** an application by Four Senses Entertainment Inc. (Four Senses) to amend the broadcasting licence for CKEE-FM Whistler, British Columbia, by adding a new rebroadcasting transmitter in North Vancouver. It also **denies** an application by Corus Premium Television Ltd. (Corus) to amend the broadcasting licence for CKNW New Westminster, British Columbia, by adding a nested FM rebroadcasting transmitter in Vancouver. A nested rebroadcasting transmitter is a transmitter within the coverage contours of the originating station to supplement coverage to an area experiencing reduced signal quality.*

The applicants proposed to use adjacent frequencies so the applications are mutually exclusive on a technical basis. The Commission therefore considers it appropriate to consider both applications in the same decision.

Four Senses application

The Commission considers that the proposed transmitter in North Vancouver is not necessary for the applicant to provide the service that it originally proposed for Whistler. Further, rebroadcasting CKEE-FM in North Vancouver does not constitute the best use of the proposed frequency, given that it could be used for an originating station to serve the market.

Corus application

The Commission considers that the applicant's proposal does not represent an appropriate solution to interference issues in downtown Vancouver given that the technical parameters are greater than what is necessary for that purpose. Use of the proposed frequency for a rebroadcasting transmitter would also prohibit the use of 99.9 MHz, an adjacent frequency, for a radio station that originates programming. Further, the addition of a nested FM transmitter under the proposed technical

parameters would result in Corus having a third FM presence in the Vancouver market, contrary to the Commission's common ownership policy. The Commission considers that an exception to the common ownership policy is not warranted.

Applications

1. Four Senses Entertainment Inc. (Four Senses) filed an application to amend the broadcasting licence for the English-language commercial FM radio station CKEE-FM Whistler, B.C. by adding an FM transmitter in North Vancouver to broadcast the programming of CKEE-FM. The proposed transmitter would operate at 99.9 MHz (channel 260A) with an average effective radiated power (ERP) of 102 watts (maximum ERP of 450 watts with an effective height of antenna above average terrain (EHAAT) of 57 metres).¹
2. Corus Premium Television Ltd. (Corus) filed an application to amend the broadcasting licence for the English-language commercial AM radio station CKNW New Westminster, B.C. by adding a nested FM transmitter² in Vancouver to broadcast the programming of CKNW. The proposed transmitter would operate at 99.7 MHz (channel 259A) with an average ERP of 1,940 watts (maximum ERP of 6,000 watts with an EHAAT of 75.4 metres).
3. The Commission received interventions opposing the Four Senses application. It also received interventions supporting, opposing and commenting on the Corus application. The public record for these applications can be found on the Commission's website at www.crtc.gc.ca or by using the appropriate application number provided above.
4. These applicants proposed to use adjacent frequencies so the applications are mutually exclusive on a technical basis. The Commission therefore considers it appropriate to consider both applications in the same decision.

Four Senses application

Applicant's rationale for the application

5. Four Senses argued that the addition of a transmitter in North Vancouver would enable CKEE-FM Whistler to become a relevant advertising vehicle not only for local Whistler businesses but also for tourism-based businesses in Whistler that serve visitors from Metropolitan Vancouver. Four Senses indicated, however, that it would continue to focus its sales resources within the community of Whistler.

¹ These technical parameters reflect those approved by the Department of Industry.

² A nested rebroadcasting transmitter is a transmitter located within the coverage contours of the originating station to supplement coverage to an area experiencing reduced signal quality.

6. Four Senses considered that CKEE-FM would be a positive addition to the Vancouver market by offering programming that is unique to Whistler but relevant to potential visitors from Vancouver. Should the application be approved, Four Senses indicated that CKEE-FM would provide an additional 19 hours of local programming each week.

Positions of interveners

7. The Commission received interventions opposing the application from 0971197 B.C. Ltd. doing business as Roundhouse Radio (Roundhouse), Jim Pattison Broadcast Group Limited Partnership (Pattison), Rogers Broadcasting Limited and Corus Entertainment Inc. (Corus).
8. The interveners argued that approval of the Four Senses application would permit the applicant to circumvent the normal competitive process and gain “back door” entry to the Vancouver radio market. They submitted that there is a scarcity of available frequencies in the Vancouver market and that Four Senses’ proposal did not represent the best use of the frequency.
9. The interveners further argued that Four Senses has not demonstrated an economic or technical need for a rebroadcasting transmitter in North Vancouver. They considered that approval of Four Senses’ proposal would extend CKEE-FM’s primary service area well beyond the Whistler community into an area that CKEE-FM is not licensed to serve.
10. The interveners considered that Four Senses’ proposal would have a negative impact on existing stations in the market. Pattison argued that the availability of CKEE-FM’s format in Vancouver would be to the detriment of its own station CKPK-FM, which offers a similar format.
11. Roundhouse submitted that CKEE-FM’s programming focus would become more generalized in order to serve a broader audience if the application were approved.

Applicant’s reply

12. Four Senses stated that its proposal was not predicated on technical or economic need but was rather an attempt to take advantage of an economic opportunity.
13. Four Senses denied that it was seeking to gain access to the Vancouver market via the back door. It stated that it would not operate a studio in Vancouver and would continue to broadcast programming for Whistler. Four Senses acknowledged that its original 2008 application did not reflect any intent to serve the Vancouver market.
14. Four Senses submitted that its proposal would have little or no impact on incumbent Vancouver radio stations given that it does not intend to sell local Vancouver advertising.

15. Four Senses reaffirmed its view that rebroadcasting CKEE-FM's programming on 99.9 MHz represented the best use of the frequency.

Commission's analysis and decisions

16. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues to be addressed are the following:

- Is the addition of a new transmitter necessary to provide CKEE-FM's service as originally proposed?
- Does the proposal represent the best use of the radio spectrum?

Is the addition of a new transmitter is necessary to provide CKEE-FM's service as originally proposed?

17. When a licensee of a radio station files an application for a technical change, including the addition of a transmitter, the Commission generally expects the licensee to present compelling technical or economic evidence that the existing technical parameters are not adequate to provide the service as originally proposed.

18. Four Senses stated in its application that the proposed amendment was not made on the basis of a technical or economic need but rather to take advantage of an economic opportunity.

19. Further, when the Commission approved Four Senses' application for a licence in Broadcasting Decision 2009-102, it was for a station that would serve the town of Whistler. In its reply to interventions, Four Senses acknowledged that its original 2008 application did not include any information pertaining to any intent to serve the Vancouver market.

20. In light of the above, the Commission finds that the proposed transmitter is not necessary to provide the service as originally proposed.

Does the proposal represent the best use of the spectrum?

21. The number of available FM frequencies in Vancouver is limited. In light of this scarcity, the Commission considers that using the frequency to rebroadcast the programming of a Whistler station rather than for a Vancouver originating station does not constitute the best use of frequency 99.9 MHz.

Conclusion

22. The Commission considers that the proposed transmitter in Vancouver is not necessary for the applicant to provide the service that it originally proposed for Whistler. Further, rebroadcasting CKEE-FM in North Vancouver does not constitute the best use of the proposed frequency, given that it could be used for an originating station to serve the market. Accordingly, the Commission **denies** an application by

Four Senses Entertainment Inc. to amend the broadcasting licence for the English-language commercial FM radio programming undertaking CKEE-FM Whistler, British Columbia, by adding a rebroadcasting transmitter in North Vancouver.

Corus application

Applicant's rationale for the application

23. Corus submitted that residents in downtown Vancouver and along the city's trolleybus corridors have difficulty receiving CKNW. This is because of signal impairment as a result of high-rise buildings and electrical interference from the Vancouver trolleybus system. Corus submitted audio files to demonstrate the severity of the signal impairment.
24. Corus argued that an FM transmitter would attract younger listeners, which are more likely to tune to the FM band. It was further of the view that its proposal would have a negligible financial impact on the Vancouver radio market.
25. Corus submitted that the addition of a new FM transmitter for an existing AM station would not introduce a new FM service to the market. As such, Corus considered that the proposal complies with the Commission's common ownership policy for radio. This policy provides that in markets such as Vancouver where eight or more commercial stations operate in a given language, a person may be permitted to own or control up to two AM and two FM stations in that language.
26. However, should the Commission conclude that its proposal does indeed constitute a new FM service, Corus was of the view that the Commission should grant an exception to the common ownership policy. Such an exception would be based on the severity of the interference that CKNW experiences and that AM news/talk stations deserve special consideration. Corus cited Broadcasting Decision 2010-942 as a precedent for such an exception. In that decision the Commission granted Cogeco inc. (Cogeco) an exception to the common ownership policy with respect to its acquisition of the spoken word-based station CHMP-FM Longueuil.

Positions of interveners

27. The Commission received:
 - supporting interventions;
 - opposing interventions from Roundhouse, Bell Media (Bell), and Pattison, and;
 - a comment from Rogers Media Inc. (Rogers).
28. The supporting interveners commended the programming that CKNW provides and considered that approval of the application would improve the quality of the station's signal for listeners.

29. All of the opposing interveners considered that approval of the application would require an exception to the common ownership policy, which they considered was not warranted.
30. Roundhouse submitted that the proposed FM transmitter would provide coverage beyond the area that is subject to reception issues. It further stated that use of frequency 99.7 MHz would prevent the use of the adjacent frequency 99.9 MHz by other broadcasters. Roundhouse further considered that approval of the application would have a serious negative economic impact on its newly licensed Vancouver station.
31. Bell and Pattison argued that all urban AM stations experience reception problems similar to those of CKNW.
32. Pattison was concerned that approval of Corus's proposal would result in interference to its station CHPQ-FM Parksville/Qualicum Beach, which operates on 99.9 MHz.
33. In its comment, Rogers submitted that the addition of an FM rebroadcasting transmitter within the licensed service area of an existing AM station does not represent a new station in the market. Rogers was of the view that the Commission should approve similar applications if it approves the one by Corus.

Applicant's reply

34. In reply, Corus reiterated that the purpose of the application was to remedy problems with CKNW's signal in downtown Vancouver. Corus submitted that it needed to use a transmitter power that was sufficient to overcome second adjacency frequency issues with its own station CFOX-FM operating on 99.3 MHz and that the proposed power level would not result in extending the FM signal way beyond the downtown core.
35. Corus further submitted that approval of the application would not result in interference with CHPQ-FM Parksville/Qualicum Beach given that the signals would intersect over water.
36. Corus maintained its position that the addition of a nested FM transmitter to rebroadcast the programming of CKNW within its existing contours would not represent a new service and therefore would not be contrary to the common ownership policy. However, should an exception to the common ownership policy be required, Corus was of the view that CKNW's technical limitations are so severe that they warrant an exception.
37. Corus indicated that that it has no intention of changing CKNW's programming and would be prepared to accept a condition of licence requiring it to maintain the news/talk format.

Commission's analysis and decisions

38. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues to be addressed are the following:

- Did Corus demonstrate a compelling technical need for the proposed amendment?
- Does the proposal constitute an appropriate technical solution?
- Does the proposed nested FM transmitter represent the best use of the radio spectrum?
- Does the proposed nested FM transmitter represent a new FM presence in the Vancouver market?
- If so, does the proposal warrant an exception to the Commission's common ownership policy?

Did Corus demonstrate a compelling technical need for the proposed amendment?

39. To demonstrate the technical need for the nested FM transmitter, Corus provided:

- a list of complaints together with their location;
- a map of downtown Vancouver showing areas where CKNW's signal is impaired;
- audio recordings of CKNW taken in these areas; and
- audio recordings comparing the reception of CKNW with CHMJ, its other AM radio station in Vancouver.

40. After examining the evidence that Corus provided, the Commission considers that there are legitimate difficulties with respect to the reception of CKNW in downtown Vancouver. Accordingly, the Commission is of the view that Corus has demonstrated a compelling technical need to mitigate reception issues in Vancouver's downtown area.

Does the proposed nested FM transmitter constitute an appropriate technical solution?

41. The area where CKNW's AM signal suffers from severe interference covers approximately six square kilometres in downtown Vancouver. However, the interference-free coverage zone for the proposed nested rebroadcasting transmitter would cover an area of approximately 290 square kilometres. When the primary contours of the AM and proposed FM transmitters are compared, the population served by the FM transmitter would amount to more than 30% of the population served by CKNW's AM signal.

42. In light of the above, the Commission considers that the proposed parameters for the rebroadcasting transmitter are greater than what is necessary to mitigate interference issues in downtown Vancouver.
43. The Commission further considers that Corus has not explored all of the alternative technical solutions that are available to CKNW.
44. Accordingly, the Commission finds that the proposed nested FM transmitter does not constitute an appropriate technical solution.

Does the proposed nested FM transmitter represent the best use of the radio spectrum?

45. Frequency 99.7 MHz is second adjacent to frequency 99.3 MHz on which Corus's station CFOX-FM operates. The operation of a second adjacent frequency within the protected contour of an existing station requires approval from that station's owner. Corus is willing to accept interference to CFOX-FM because it would benefit its other station CKNW. Since Corus would be unlikely to accept such interference from a competing broadcaster, frequency 99.7 MHz is, for all intents and purposes, available only to Corus.
46. The Vancouver market is congested and availability of FM frequencies in the market is scarce. The frequencies that are available are limited in coverage. As indicated earlier, the proposed transmitter would duplicate CKNW's programming on the FM band over a large part of its coverage area. Corus's proposal is mutually exclusive with Four Senses' proposal to use adjacent frequency 99.9 MHz in North Vancouver, which was denied earlier in this decision. Awarding the use of frequency 99.7 MHz to Corus would remove the possibility for other broadcasters to offer a new local service on frequency 99.9 MHz.
47. In light of the above, the Commission is of the view that Corus's proposal to use frequency 99.7 MHz to rebroadcast CKNW does not constitute the best use of FM spectrum in Vancouver given that it would preclude the use of frequency 99.9 MHz for an originating station to serve the market.

Does the proposed nested FM transmitter represent a new FM presence in the Vancouver market?

48. The Commission's common ownership policy for radio permits a licensee to own or control up to two AM and two FM stations in a given language in markets where there are eight or more commercial stations. The common ownership policy serves to ensure diversity and a competitive balance in a specific market.
49. Corus currently owns and operates two FM stations (CFMI-FM and CFOX-FM) and two AM stations (CKNW and CHMJ) in the Vancouver market. It argued that its proposed nested FM transmitter does not constitute a new FM presence in the market.
50. Although the proposed FM rebroadcasting transmitter would not extend the population coverage of CKNW beyond what it currently reaches with its AM

transmitter, it would provide CKNW with coverage of a sizeable portion of the Vancouver population in the FM transmitter's 3mV/m contour and the majority of the population of the Vancouver CMA within its 0.5mV/m contour.

51. Due to the coverage of the market provided by the proposed rebroadcasting transmitter as well as the better sound quality offered by an FM transmitter, approval could have the effect of migrating significant portions of CKNW's tuning from its AM station to the FM band. As a result, Corus could market the station in Vancouver as an FM station and steer audience towards the FM signal, providing it with a de facto third FM station in the market.
52. In light of the above, the Commission considers that the addition of the nested FM transmitter under the proposed technical parameters would result in Corus having a third FM presence in the Vancouver market. Approval of Corus's application would therefore require an exception from the Commission's common ownership policy.

Does the proposal warrant an exception to the Commission's common ownership policy?

53. The Commission set out its *Revised guidelines for the application of the Common Ownership Policy for Radio* in Broadcasting Information Bulletin 2010-341. In that information bulletin, the Commission noted that it had granted rare exceptions to the common ownership policy where, due to adverse economic circumstances, the survival of a radio station has been in serious doubt. It further stated that exceptions may also be permitted to address severe technical limitations.
54. Corus did not file its application on the basis of economic need and based its application on the severity of the technical limitations that CKNW experiences. Corus indicated that when a signal becomes inaudible to its listeners within its licensed service area, it should be considered as a severe technical limitation.
55. AM signals are sensitive to electromagnetic interference caused by electronic apparatus and power lines and are therefore more affected in larger metropolitan areas.
56. While CKNW's signal is subject to technical limitations in downtown Vancouver, the Commission considers that they do not qualify as severe technical limitations under the common ownership policy, given that such issues are inherent to the operation of all AM stations in major urban markets including other AM stations in Vancouver. This approach with regard to a nested FM proposal is consistent with Broadcasting Decision 2012-307. In that decision, the Commission denied an exception to the common ownership policy with respect to the addition of an FM transmitter to rebroadcast the programming of CHQR Calgary.
57. Corus cited Broadcasting Decision 2010-942 as a precedent for granting an exception to the common ownership policy. In that decision, the Commission approved the transfer of control of various radio stations from Corus to Cogeco and also approved Cogeco's request for an exception to the common ownership policy in relation to the French-language station CHMP-FM Longueuil. In granting this exception the

Commission stated that its decision was based on the unique circumstances of the French-language radio market and the need to preserve a diversity of voices in Montréal. The Commission noted that “the viability of a major predominantly spoken word station on the FM band in the Montréal market is singularly important.” It further added that CHMP-FM plays an important role in the Montréal market and is the only alternative to the CBC’s French-language news and public affairs station.

58. The Commission considers that the same line of reasoning expressed in Broadcasting Decision 2010-942 would not apply to the Vancouver market. In contrast to the Montréal market, which is only served by one commercial French-language spoken word station, Vancouver, an English-language market, is served by numerous commercial radio stations that offer English-language spoken word formats. Further, CKNW’s programming is not unique in Vancouver and is replicated in part by other commercial stations as well as by CBC Radio One. Accordingly, the Commission is of view that Corus’s situation is different from that of CHMP-FM Longueuil.

Conclusion

59. In light of all of the above, the Commission **denies** the application by Corus Premium Television Ltd. to amend the broadcasting licence for the English-language commercial AM radio programming undertaking CKNW New Westminster, B.C. by adding a nested FM transmitter in Vancouver to broadcast the programming of CKNW.
60. The Commission considers that the applicant’s proposal does not represent an appropriate solution to interference issues in downtown Vancouver given that the technical parameters are greater than what is necessary for that purpose. Use of the proposed frequency for a rebroadcasting transmitter would also prohibit its use for a radio station that originates programming. Further, the addition of a nested FM transmitter under the proposed technical parameters would result in Corus having a third FM presence in the Vancouver market, contrary to the Commission’s common ownership policy. The Commission considers that an exception to the common ownership policy is not warranted.

Secretary General

Related documents

- *A targeted policy review of the commercial radio policy*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *CHQR Calgary –New FM transmitter in Calgary*, Broadcasting Decision CRTC 2012-307, 24 May 2012
- *Transfer of effective control of various commercial radio programming undertakings from Corus Entertainment Inc. to Cogeco inc.*, Broadcasting Decision CRTC 2010-942, 17 December 2010

- *Revised guidelines for the application of the Common Ownership Policy for Radio*, Broadcasting Information Bulletin CRTC 2010-341, 4 June 2010
- *English-language FM radio station in Whistler*, Broadcasting Decision CRTC 2009-102, 2 March 2009