



Broadcasting Decision CRTC 2008-51

Ottawa, 3 March 2008

Radio CHNC ltée

New Carlisle, Gaspé, Carleton, Chandler and Percé, Quebec

Application 2007-1089-9, received 25 July 2007

Public Hearing in the National Capital Region

5 December 2007

CHNC New Carlisle and its transmitter CHGM Gaspé – Conversion to the FM band and addition of FM transmitters in Carleton, Chandler and Percé

*The Commission **approves** the application by Radio CHNC ltée for a broadcasting licence to operate a French-language commercial FM radio programming undertaking in New Carlisle, Quebec and to add new FM transmitters in Carleton, Chandler, Gaspé and Percé, Quebec. The new FM station at New Carlisle and the FM transmitter in Gaspé are to replace the AM station CHNC New Carlisle and its AM transmitter CHGM Gaspé.*

Introduction

1. The Commission received an application from Radio CHNC ltée. (Radio CHNC) for a broadcasting licence to operate a new French-language commercial FM radio programming undertaking in New Carlisle, Quebec and to add new FM transmitters in Gaspé, Carleton, Chandler and Percé, Quebec. The new FM station in New Carlisle and the FM transmitter in Gaspé are to replace the AM station CHNC New Carlisle and its AM transmitter CHGM Gaspé.
2. Radio CHNC indicated that the conversion to the FM band would ensure the survival of CHNC, one of the oldest Francophone stations in North America. The applicant noted that CHNC is the only station still broadcasting on the AM band on the Gaspé Peninsula and that all local Gaspé stations currently competing with CHNC are FM stations, putting the station at a competitive disadvantage. According to the applicant, converting CHNC to the FM band would enable the station to consolidate its audience share and advertising revenues. Radio CHNC also referred to acquired rights with respect to the sale of advertising in the locations served by the AM transmitters.
3. The Commission notes that in recent years CHNC has gone through a difficult period, owing in part to the drop in its audience share and advertising revenues, which Radio CHNC attributes to the audience moving from the AM to the FM band and to greater competition from local and regional FM stations. According to BBM Canada data, CHNC's audience share in the Avignon-Bonaventure central market fell from 28% in the fall of 1997 to 9% in the fall of 2006.

4. The proposed FM station would continue to broadcast a classic rock and country music format. Approximately 11.5 hours would be devoted to local spoken word programming, including news, sports, weather, birth and death announcements and a public affairs program. The station would broadcast four hours of news each broadcast week, 90% of which would be local news.
5. The Commission received and considered interventions concerning this application. The complete record of this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
6. After examining the application in light of the discussions at the hearing, the interveners' comments, the applicant's replies and the documents that the applicant undertook to provide to the Commission subsequent to the hearing, the Commission considers that the issues raised in the evaluation of this application are as follows:
 - the use of new transmitters to duplicate the AM station's existing coverage,
 - the solicitation of local advertising,
 - the applicant's financial ability,
 - the station's non-compliance, and
 - the effective control of the licensee.

Use of new transmitters to duplicate the AM station's existing coverage

7. From a technical perspective, the Commission's analysis has revealed that due to the nature of signal propagation in the AM band, Radio CHNC is able to cover a large part of the Gaspé Peninsula with only two AM transmission sites. However, because FM signal propagation requires a sightline between the transmitter and the receiver and given the uneven topography of the Gaspé Peninsula, the Commission, like the applicant, believes that it would be very difficult to duplicate Radio CHNC's AM coverage using only one transmitter and one FM rebroadcasting transmitter. To offer coverage on the FM band that is comparable to the coverage offered by the existing AM station, Radio CHNC proposed to replace its AM station in New Carlisle and its Gaspé AM transmitter with an FM station in New Carlisle and four FM transmitters in Carleton, Chandler, Gaspé and Percé.

8. Diffusion communautaire Baie des Chaleurs inc., licensee of the community station CIEU-FM Carleton, opposed adding an FM transmitter in Carleton because of its potential impact on CIEU-FM's audience share and advertising revenues. The Commission notes that Radio CHNC stated in reply that it had been serving the Avignon-Bonaventure area since 1933 because of the extensive coverage of CHNC's AM signal. According to the applicant, 27% of its station's revenues currently come from the Carleton region and the goal of its application is not to serve a new market but rather to serve its audience more effectively by providing a better quality signal.
9. The Commission is satisfied that given the uneven terrain, the investment required to purchase the necessary equipment and infrastructure, the distribution of the population and the availability of FM frequencies in the Gaspé, it would be acceptable to allow the applicant to use several FM transmitters to duplicate the coverage of the existing New Carlisle station and its Gaspé transmitter. The Commission is also satisfied that the addition of the proposed transmitters would merely maintain the current station's coverage.

Solicitation of local advertising

10. Radio Gaspésie inc., licensee of the community station CJRG-FM Gaspé, opposed the applicant's plan to operate CHGM Gaspé as a stand-alone station with, among other things, its own programs and advertisements. According to the intervener, the Gaspé market is shrinking and could not support another radio station without jeopardizing CJRG-FM's survival. The Commission notes that in its response the applicant confirmed that the purpose of its application was to convert the CHGM Gaspé transmitter to the FM band in order to rebroadcast CHNC New Carlisle's programming until it acquired the financial means to establish a studio in Gaspé where it would produce programs and interviews. Given that the applicant indicated that it would file an application to amend its licence if it were to decide to separate some or all of its Gaspé rebroadcasting transmitter's programming from CHNC's programming, the Commission considers that for the time being the only issue that must be examined with respect to this intervention is the solicitation of local advertising.
11. The Commission notes that in support of its request for approval to solicit local advertising in the locations served by the proposed transmitters, the applicant noted that when it started in 1982, CHGM had a stand-alone studio in Gaspé and aired 12 hours and 30 minutes of separate local programming. The remainder of the programming originated with the Telemedia network and CHNC. In February 1985, CHGM became a full-time rebroadcaster of CHNC because of financial problems. According to the applicant, there is currently nothing preventing CHGM from selling advertising in the Gaspé sector. The applicant would like to maintain this right once its station converts to the FM band.
12. The Commission notes that in order to accept or solicit local advertising, a commercial FM station must broadcast no less than 42 hours of local programming. This condition of licence is imposed on all commercial FM radio stations.

13. The Commission considers that the acquired rights cited by Radio CHNC in order to continue accepting and soliciting advertising for each of its transmitters after moving from the AM to the FM band do not exist. With regard to the advertising offered by the station in communities served by the AM transmitters, the Commission notes that this matter was discussed at length at the public hearing. The Commission notes that the proposed contours for the new FM station and its transmitters would enable the applicant to cover about the same area as that now covered by CHNC and its CHGM transmitter. The Commission also notes that CHNC has served the southern coastal corridor of the Gaspé Peninsula bounded by the Matapedia Valley and Cloridorme for several decades and that over the years it has developed an audience and a clientele in the various communities served. Moreover, according to the applicant's business plan, a significant portion of the advertising it currently airs comes from markets other than New Carlisle. As a result, the Commission considers that maintaining the status quo would not have a negative impact on CJRG-FM or on the other licensees operating in one of the locations to be served by one of the applicant's FM transmitters.

Applicant's financial ability

14. In its intervention, Radio du Golfe inc. (Radio du Golfe), licensee of the commercial stations CJMC-FM Sainte-Anne-des-Monts and CFMV-FM Chandler, questioned the applicant's ability to pay for the equipment and infrastructure required to complete its project, as well as its financial forecasts, in particular with respect to its ability to make its proposed station profitable as of the first year of operation. According to Radio du Golfe, the applicant would have to absorb a deficit of \$500,000 accumulated over the last seven years, as well as invest in the proposed conversion to the FM band, which could cost much more than the \$240,000 suggested by the applicant.
15. The applicant replied that as part of the transaction between the Coopérative de travailleurs CHNC and Mr. Houde, the station's former owner, Mr. Houde agreed to write off the \$430,000 he had advanced to the station, thus eliminating almost all the accumulated deficit. This write-off and the positive steps taken by the new shareholders put the station in a profitable position. The applicant added that the involvement of employees and the support of the funding agencies approached had allowed it to successfully complete the first phase of its project, namely acquiring the station and remedying its financial problems. For the second phase of the project (i.e., the conversion to the FM band), the applicant noted that it had the financial support of organizations like the Réseau d'investissement social du Québec, the Fiducie du Chantier d'économie sociale, Filaction, the Centre local de développement and the Ministère du développement économique, de l'innovation et de l'exportation du Québec. Finally, the applicant filed a document at the hearing showing a detailed breakdown of the investment, the total cost of which is \$249,000.

16. The Commission is satisfied with the applicant's reply. Given the stabilization of the applicant's financial situation, the financial support of several organizations and the financial involvement of the employees, the Commission considers that the applicant possesses the financial resources required to successfully complete the second phase of its project, i.e. the conversion of the station from the AM to the FM band.

Station's non-compliance

17. In Broadcasting Notice of Public Hearing 2007-13, the Commission underlined the fact that the applicant has had non-compliance issues throughout its previous licence terms. At the public hearing, the Commission discussed with the applicant its concerns over the station's non-compliance with the requirements of the *Radio Regulations, 1986* (the Regulations) and more particularly with respect to the broadcast of French-language vocal music during the 25 February–3 March 2007 broadcast week.
18. Radio CHNC explained that both instances of non-compliance occurred prior to the sale of the station to the Coopérative des travailleurs CHNC and that at the time of the most recent non-compliance it had not yet had the time to address the numerous problems and shortcomings.
19. At the hearing, Radio CHNC assured the Commission that it had implemented several corrective measures, including an internal policy, and that it had improved its infrastructure, including installing a computerized broadcasting system, music management software and a computerized logger tape system to ensure the station's current and future compliance.
20. Based on Radio CHNC's explanations, the Commission is satisfied that the applicant has taken the steps required to ensure the station's compliance.

Effective control of the licensee

21. The Commission notes that some of the terms and conditions listed in the letters of intent with regard to funding for the applicant could have an impact on effective control of the licensee and its undertaking, as described in section 11(3) of the Regulations. Section 11(3) provides, among other things, that there is effective control of the licensee or its undertaking when a person has the ability to cause the licensee or its board of directors to undertake a course of action.
22. In a letter dated 22 January 2008, the applicant explained the reasons that led it to believe that the financial backers would not have effective control over its undertaking. The applicant noted, among other things, that a financial backer could ask for the presence of a particular member on its board of directors only on an exceptional basis and in the case

of a serious problem with the continuity of the undertaking. The applicant also submitted a letter from Mr. François Ferland, legal counsel for the Fiducie du Chantier de l'économie sociale, in which Mr. Ferland specifies that the provisions in the funding offer do not enable the lender to exercise "effective control" within the meaning of section 11(3) of the Regulations.

23. In light of the above, the Commission is satisfied that the applicant would maintain its control over its undertaking and consequently its licence.

Conclusion

24. The Commission is satisfied with the applicant's replies and notes that all the interveners recognized the merits of the application to convert CHNC and its transmitter CHGM to the FM band.
25. The Commission considers that the conversion to the FM band and exemption from the condition of licence concerning the solicitation of local advertising in areas served by the Carleton, Chandler, Gaspé and Percé transmitters would allow the station to cover the area it currently serves and to retain and consolidate its audience share and advertising revenues.
26. In light of the above, the Commission **approves** the application by Radio CHNC Itée for a broadcasting licence to operate a new French-language commercial FM radio programming undertaking in New Carlisle and to add new FM transmitters in Gaspé, Carleton, Chandler and Percé, Quebec.
27. The licence will be subject to the **conditions** set out in Public Notice 1999-137, with the exception of conditions of licence numbers 5 and 9. The licence will also be subject to the terms and **conditions** set out in the appendix to this decision.

Canadian content development

28. In Broadcasting Public Notice 2006-158, the Commission set out a new approach to the development and promotion of Canadian artists. In order to reflect a new emphasis on development initiatives that lead to the creation of audio content for broadcast using Canadian resources, the Commission replaced the expression "Canadian talent development" (CTD) with "Canadian content development" (CCD). Under the new policy, each radio station holding a commercial radio licence is required to make a basic annual CCD contribution based on its total broadcast revenues in the previous broadcast year. No less than 60% of the basic annual CCD contribution must be forwarded to FACTOR or MUSICACTION. The remaining amount may be allocated, at the licensee's discretion, to parties and initiatives fulfilling the definition of eligible initiatives in Broadcasting Public Notice 2006-158. This requirement will be reflected in the Regulations. Until such time, it will be implemented by a transitional condition of licence that will expire upon the coming into force of the amendments to the Regulations.

29. In the present case, Radio CHNC made a commitment that in addition to the required basic annual contributions, it would, by condition of licence, contribute \$1,000 to CCD in the first seven years of operation. Radio CHNC proposed to direct its entire basic annual contribution as well as half (\$500) of its additional contribution to MUSICACTION. The remainder of the annual additional contribution (\$500) would be directed to Cégep en Spectacle. **Conditions of licence** reflecting these commitments are set out in the appendix to this decision.
30. The Commission reminds the applicant that any development initiatives that have not been allocated to specific parties by condition of licence must be allocated to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists. Parties and initiatives eligible for CCD funding are identified in paragraph 108 of Broadcasting Public Notice 2006-158.

Simulcast period and revocation of AM licence

31. As set out in the appendix to this decision, the licensee is authorized to simulcast the programming of the new FM station on CHNC for a transition period of six months following the commencement of operations of the FM station. Pursuant to sections 9(1)(e) and 24(1) of the *Broadcasting Act* and consistent with the licensee's request, the Commission **revokes** the licence for CHNC New Carlisle and its transmitter CHGM Gaspé effective at the end of the simulcast period.

Secretary General

Related documents

- Broadcast Notice of Public Hearing CRTC 2007-13, 4 October 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999
- *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992

This decision is to be appended to the 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>.

Appendix to Broadcasting Decision CRTC 2008-51

Terms, conditions of licence and encouragement

Issuance of the broadcasting licence to operate a French-language commercial FM radio programming undertaking in New Carlisle with FM transmitters in Carleton, Chandler, Percé and Gaspé, Quebec

Terms

The licence will expire 31 August 2014.

The station will operate at 107.1 MHz (channel 296B1) with an average effective radiated power of 3,800 watts.

The transmitter in Carleton will operate at 99.1 MHz (channel 256B1) with an average effective radiated power of 480 watts.

The transmitter in Chandler will operate at 98.3 MHz (channel 252A) with an average effective radiated power of 870 watts.

The transmitter in Gaspé will operate at 99.3 MHz (channel 257A) with an average effective radiated power of 257 watts.

The transmitter in Percé will operate at 107.3 MHz (channel 297B1) with an average effective radiated power of 426 watts.

The Department of Industry (the Department) has advised the Commission that while this application is conditionally technically acceptable, it will only issue a broadcasting certificate when it has determined that the proposed technical parameters will not create any unacceptable interference with aeronautical NAV/COM services.

The Commission reminds the applicant that, pursuant to section 22(1) of the *Broadcasting Act*, no licence may be issued until the Department notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.

The undertaking and its transmitters must be operational at the earliest possible date and in any event no later than 24 months from the date of this decision, unless a request for an extension of time are approved by the Commission before 3 March 2010. In order to ensure that such requests are processed in a timely manner, they should be submitted at least 60 days before this date.

Conditions of licence

1. The licence shall be subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, with the exception of conditions 5 and 9.
2. The licensee is authorized to simulcast the programming of the new FM station on CHNC New Carlisle and CHGM Gaspé for a transition period of six months following the commencement of operations of the FM station and its FM transmitter in Gaspé.
3. The licensee shall make a basic annual contribution to Canadian content development (CCD). The amount of the contribution shall be determined in accordance with the policy set out in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006 (Broadcasting Public Notice 2006-158), as amended from time to time.

This condition of licence shall expire upon the coming into force of the amendments to the *Radio Regulations, 1986* relating to CCD.

4. In addition to the basic annual contribution, the licensee shall, upon commencement of operations, contribute \$1,000 annually to the promotion and development of Canadian content. As proposed by the applicant, its entire basic annual contribution and half (\$500) of its additional annual contribution shall be paid to MUSICACTION. The annual remainder, \$500, shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives in Broadcasting Public Notice 2006-158.

Encouragement

Employment equity

In accordance with Public Notice 1992-59, the Commission encourages the applicant to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.