



## Broadcasting Decision CRTC 2006-258

Ottawa, 22 June 2006

**Aboriginal Voices Radio Inc.**  
Vancouver, British Columbia

*Application 2006-0572-7*  
*Broadcasting Public Notice CRTC 2006-65*  
*24 May 2006*

### **Use of frequency 106.3 MHz by the new English- and Native-language FM radio station in Vancouver**

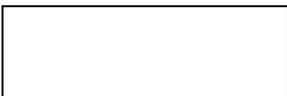
*In this decision, the Commission **approves** the application by Aboriginal Voices Radio Inc. to operate its FM radio station in Vancouver at 106.3 MHz (channel 292C).*

#### **The application**

1. In *New Aboriginal-language radio station to serve Vancouver approved in part*, Decision CRTC 2001-314, 5 June 2001, the Commission approved an application by Gary Farmer, on behalf of a company to be incorporated (Aboriginal Voices Radio; AVR) now known as Aboriginal Voices Radio Inc. (AVR), to operate a new Native Type B English- and Native-language FM radio undertaking to serve Vancouver.
2. However, the Commission denied AVR's proposed use of frequency 90.9 MHz because, in the Commission's view, the use of 90.9 MHz by AVR did not constitute the best possible use of that frequency. The Commission instead directed AVR to submit an application proposing the use of another FM frequency acceptable to both the Commission and to the Department of Industry (the Department). AVR filed the present application further to the Commission's direction.

#### **Interventions**

3. The Commission received seven interventions in support of this application, and over 7,000 interventions expressing opposition to it.
4. Interventions in support of the AVR proposal were submitted by Teoni Spathelfer, who noted that very little programming targeted to Aboriginal audiences is available in Canada. The Canadian Society for the Recording Arts indicated that it supported the application because the broadcast of greater amounts of Canadian music would enhance Canadian culture. Simpcw First Nation noted that over 50,000 Aboriginal persons live in Vancouver, and supported the fact that AVR planned to make its programming available at no charge, to existing Aboriginal independent and regional networks across Canada. Georges Erasmus cited the importance of the exposure of Aboriginal culture and points



of view to non-Aboriginal audiences, and supported the role of the electronic media in that exposure. Ron Ignace was in favour of AVR's proposal due to the ability of AVR to preserve, revitalize and promote Aboriginal languages. The Assembly of First Nations noted AVR's ability to provide programming of direct relevance to Aboriginal persons in urban centres. Laurie Robinson expressed general support for the AVR proposal.

5. In large part, the opposing interventions indicated that, if AVR's new station is approved to broadcast on 106.3 MHz, it will result in interference to the signal of KLYN-FM Lynden, Washington. KLYN-FM is owned by Crista Broadcasting, and is known as "Praise 106.5", a U.S.-based single-faith Christian radio station with a signal receivable in the Vancouver area. Interveners stated that Praise 106.5 provides Canadian news and traffic reports, and carries advertising from Canadian businesses. Several interveners requested that the Commission hold a public hearing to consider the views of all concerned.
6. Opposing interveners also contended that no other Christian radio service is available in the lower mainland of British Columbia, and that the Commission should respect the rights of Canadians to choose to listen to a service that contributes to a peaceful atmosphere in their daily lives.
7. In particular, an intervention in opposition from Kuhn & Company, serving as representatives of Praise 106.5 in Canada, raised the possibility of undue interference, and of international frequency management as detailed in the *Agreement Between the Government of Canada and the Government of the United States of America Relating to the FM Broadcasting Service and the Associated Working Arrangement* (the Agreement).

#### **Applicant's reply**

8. AVR chose to file one reply to all interventions. According to AVR, the interventions are without foundation under the *Broadcasting Act* (the Act). The applicant noted that the Act states a clear objective of creating a place for programming for Canada's Aboriginal peoples, and that the Act does not support the position of the opposing interveners.
9. AVR noted that, contrary to the contention of some interveners, FM frequencies for use in the lower mainland of British Columbia are extremely scarce. It further added that the requested frequency is the best alternative for AVR and that the proposed frequency would not cause interference to any Canadian undertaking. AVR expressed the view that the interveners' preference for a single-faith foreign radio station should not outweigh AVR's choice of frequency. The applicant also indicated that the technical arguments presented by Kuhn & Company are unfounded and not supported by the Agreement.
10. Finally, AVR noted the support expressed for its proposal, including that from provincial and national Aboriginal leaders.

## **Commission's analysis and determination**

11. In its evaluation of AVR's application, the Commission has carefully considered the views of the applicant and of the interveners.
12. With respect to the interveners' suggestions that a public hearing should be held, the Commission is of the view that no public hearing related to this matter is necessary, since the volume and scope of the interventions has ensured that the Commission has before it all the necessary information with which to make an informed decision.
13. The Commission's policies and decisions are guided by the Act. Section 3(1)(a) of the Act states that the Canadian broadcasting system shall be effectively owned and controlled by Canadians. In section 3(1)(b) of the Act the Commission is also charged with the maintenance of Canadian national identity and cultural sovereignty, and ensuring Canadian expression. In sections 3(1)(d)(iii) and 3(1)(o) the Commission is specifically required to ensure the special place of Aboriginal persons in the broadcasting system, and to ensure that programming that reflects the Aboriginal cultures of Canada is provided within the Canadian broadcasting system as resources become available for that purpose.
14. With respect to the interveners' suggestions that approval of this application would contravene the Agreement, the Commission notes that the technical parameters associated with AVR's use of frequency 106.3 MHz would result in interference to KLYN-FM, but that the zone of interference would be situated entirely in Canadian territory. Under the terms of the Agreement, a station does not receive protection outside the boundary of the country in which the station in question is located. In this regard, Section 5.2.2.4 of the Agreement states:

Where the protected contour extends beyond the boundary of the country in which the allotment is located, protection shall be provided only to land areas, including islands, lying within that country. In this case overlap of the interfering and the protected service contours shall be acceptable provided that the interference zone does not fall within these areas.
15. Since KLYN-FM is not entitled to receive the same technical protection in Canada as Canadian services enjoy, AVR's proposed technical parameters have been declared technically acceptable to the Department, even though the KLYN-FM service will be degraded for many Canadian listeners. In this regard, the Commission notes that affording protection to foreign stations in Canada would limit the spectrum available to Canadian undertakings, and would not "facilitate the provision of Canadian programs to Canadians" as set out in section 5(2)(e) of the Act.

16. The Commission notes that, while Vancouver and the lower mainland are currently well served by a diversity of Canadian radio services, the urban Aboriginal population of over 50,000 individuals is underserved, with little programming directed principally at their cultural heritage. In this regard, the Commission notes that Aboriginal persons have a favoured status under the Act, which other segments of society, including faith-based groups, do not enjoy.
17. At the same time, the Commission is mindful of the public's preferences for certain styles of programming, and reminds the interveners that the programming of KLYN-FM is available through the Internet via the station's website. Further, the Commission notes that other alternatives exist for the provision of religious programming, among them satellite radio, various Internet-based radio services and audio channels delivered by cable.
18. Although the Commission remains sensitive to the issues of choice and public ownership of the broadcasting system, the predominance of support for Canadian programming is of primary concern in the consideration of the present application. In this regard, despite numerous interventions insisting on the possible benefits to the diversity of programming in the Vancouver area that KLYN-FM would provide, the Commission nevertheless considers that the addition of an Aboriginal based programming undertaking to the area would accomplish the requirements and afford a number of benefits contemplated under the Act. In this regard, and on the subject of diversity, the Commission reiterates its finding on the under-service the Aboriginal community in the Vancouver area experiences with the programming currently available.
19. In light of all of the above, the Commission **approves** the application by Aboriginal Voices Radio Inc. to operate its new Native Type B, English- and Native-language FM radio programming undertaking in Vancouver at 106.3 MHz (channel 292C).
20. The Department has advised the Commission that, while AVR's application is conditionally technically acceptable, it will only issue a broadcasting certificate once it has determined that the proposed technical parameters will not create any unacceptable interference with aeronautical NAV/COM services.
21. The Commission reminds AVR that, pursuant to section 22(1) of the Act, no licence may be issued until the Department has notified the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.

Secretary General

*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>*