



Broadcasting Decision CRTC 2006-688

Ottawa, 21 December 2006

Pellpropco Inc.
St. Catharines, Ontario

Application 2006-0847-4
Broadcasting Public Notice CRTC 2006-96
28 July 2006

CHSC St. Catharines – Licence amendment

*The Commission **denies** an application for a licence amendment that would have authorized the English-language, commercial radio station CHSC St. Catharines to devote up to 40% of its programming to third-language programs.*

The application

1. The Commission received an application by Pellpropco Inc. (Pellpropco) to amend the broadcasting licence for the commercial English-language radio programming undertaking CHSC St. Catharines, in order to add a condition of licence authorizing the licensee to devote up to 40% of its programming to third-language programs.
2. Pellpropco stated that CHSC currently devotes 15% of the broadcast week to third-language programs, all of which are in Italian. It stated that it wishes to increase the amount of Italian-language programs that CHSC is permitted to broadcast in order to serve the large Italian-speaking population in the St. Catharines market. However, Pellpropco also indicated its willingness to provide Polish-language programming, if its application were approved.
3. Pellpropco further submitted that, although St. Catharines receives the signals of out-of-market ethnic radio stations, there is currently no ethnic radio station licensed to serve this market. According to Pellpropco, approval of its application would increase the diversity of radio programming available in this area and would not have a negative impact upon the incumbent radio stations in the market.
4. CHSC is located in southern Ontario where there is wide variety of cultural communities. In addition, there currently is no local ethnic radio station licensed to serve the St. Catharines market. Accordingly, the Commission asked Pellpropco to comment on whether CHSC should be subject to the broad service requirement established under *Ethnic broadcasting policy*, Public Notice CRTC 1999-117, 16 July 1999 (the Ethnic

Policy). Under the Ethnic Policy, ethnic stations are expected to serve a range of cultural groups in a variety of languages. The Commission also asked Pellpropco to clarify the amount of third-language programming and as well as the amount of ethnic programming it intended to broadcast.

5. In response, Pellpropco maintained that approval of its application would not change CHSC's status to that of an ethnic station. Accordingly, in Pellpropco's view, CHSC should not be subject to the broad service requirement established for ethnic stations in the Ethnic Policy.
6. Pellpropco stated that it wanted to devote up to 40% of the broadcast week to programming targeted to individuals of Italian descent. While Pellpropco indicated that it was also willing to provide third-language programming to Polish-speaking listeners in the St. Catharines region, it maintained that there was not a sufficient advertising base to justify CHSC offering programming in other third languages.
7. According to Pellpropco, CHSC's extended 0.5 mV/m contour covers up to 300,000 Italian-speaking listeners and its interference-free contour extends to Hamilton, Ontario. Pellpropco further contended that, although there is a significant Italian-speaking population in Hamilton, that city is not served by a local radio station that offers Italian-language programming.
8. Pellpropco stated that all of CHSC's Italian-language programming would be station-produced and would include music, live remote broadcasts, hourly news, sports and weather, spoken word content and promotions of local events. It stated that, although CHSC currently devotes only 15% of the broadcast week to Italian-language programming, those programs generate 75% to 80% of the station's total sales.

Interventions

9. The Commission received interventions in opposition to the application by Radio 1540 Limited (Radio 1540), the licensee of ethnic radio stations CHIN and CHIN-FM Toronto, Ontario, by CKMW Radio Ltd. (CKMW), the licensee of ethnic radio station CIAO Brampton, Ontario and by the Canadian Association of Ethnic Broadcasters (CAEB). Radio 1540 and CKMW are both members of the CAEB.
10. All three interveners contended that this application is an attempt by Pellpropco to operate CHSC as an ethnic radio station without being subject to the provisions of the Ethnic Policy. CKMW argued that, given the multiplicity of languages in the St. Catharines region, the community would not be well served by a station whose third-language programming was only in the Italian language.
11. The CAEB stated that it had monitored CHSC's programming over a period beginning at 5:00 a.m., Friday, 11 August 2006 and ending at 9:30 p.m., Thursday, 17 August 2006. According to the CAEB, its monitoring revealed that CHSC is currently not operating in compliance with its conditions of licence and the *Radio Regulations, 1986*

(the Regulations). Specifically, the CAEB claimed that CHSC is currently devoting 22 hours, or 17.5%, of the broadcast week to Italian-language spoken word programming, and 49 hours, or 39%, of the broadcast week to Italian-language music programming. The CAEB also claimed that CHSC broadcasts significant blocks of Italian music programming interspersed with English-language spoken word programming.

12. In their interventions, Radio 1540 and CKMW supported the CAEB's contention that CHSC was not operating in compliance with its conditions of licence and the Regulations. Moreover, Radio 1540 and CKMW claimed that CHSC currently provides a substantial amount of Italian-language programming and that it targets its programming to listeners outside its authorized service area, namely to Italian-speaking listeners in the Greater Toronto Area (GTA). Radio 1540 maintained that approval of the application would enable CHSC to draw more listeners away from the ethnic stations in the GTA that offer Italian-language programming and serve the broader ethnic community and would have a negative impact on those stations.

Licensee's reply

13. In response, Pellpropco stated that, according to the Ethnic Policy, non-ethnic stations such as CHSC are not bound to serve a broad range of ethnic groups. However, CHSC reiterated that, if its application were approved, it would offer Polish-language programming.
14. Pellpropco submitted that the CAEB's monitoring report was flawed for the following reasons:
 - CAEB's monitoring did not encompass a broadcast week, which is defined in the Regulations as seven consecutive broadcast days, beginning on Sunday;
 - CAEB's monitoring appeared to include material broadcast outside the regulated hours of the broadcast day, which is defined in the Regulations as the total number of hours devoted to broadcasting for a period beginning at 6:00 a.m. and ending at midnight on the same day; and
 - under the Ethnic Policy, it is the spoken word portion of a program, not the music, that determines whether a program is ethnic.
15. While Pellpropco asserted that CHSC currently devotes only 15% of the broadcast week to ethnic programming, it acknowledged that, in the broadcast week commencing Sunday, 13 August 2006, it did broadcast in excess of 15% ethnic programming. Pellpropco stated that has taken measures to ensure that CHSC operates in compliance with its regulatory requirements at all times.
16. Pellpropco affirmed that CHSC does serve the local St. Catharines market, offering locally oriented sports-talk programs, current affairs and community events programs and other community reflection. It added that it maintains local studios and business offices in St. Catharines.

17. Pellpropco indicated that, since CHSC would not broadcast brokered ethnic programming, CAEB members would not lose payments from brokers for the sale of their airtime. Pellpropco further argued that, because CHSC's night-time contours do not extend across Lake Ontario, its signal reception is poor in the principal marketing areas of Radio 1540 and CKMW.

Commission's analysis and determination

18. Under the terms of the Ethnic Policy, non-ethnic commercial radio stations may devote not more than 15% of their schedules to third-language programming, unless they obtain Commission approval for an increase up to 40%. This provision of the Ethnic Policy is incorporated into section 7(3) of the Regulations.
19. Under the Ethnic Policy and the Regulations, a third-language program is defined as an ethnic program in a language other than English, French, or a language of the Aboriginal peoples of Canada. An ethnic program is defined as a program in any language that is specifically directed toward any culturally or racially distinct group, other than one whose heritage is Aboriginal Canadian, from France or from the British Isles. Music is not included when determining whether a particular program qualifies as ethnic programming and the spoken word component of the program determines the ethnic group being served.
20. In the present case, Pellpropco is requesting authority to increase the amount of third-language programming that its English-language commercial radio station may broadcast. Pellpropco is not requesting an increase in the amount of ethnic programming that CHSC is authorized to broadcast. However, in its evaluation of this application, the Commission finds that Pellpropco and the interveners use the terms "ethnic programming" and "third-language programming" interchangeably. Accordingly, the Commission finds that it is difficult to determine the validity of the arguments presented by Pellpropco and the interveners.
21. The Commission agrees with Pellpropco that the monitoring of CHSC's programming conducted by the CAEB encompassed a period that does not correspond to the broadcast week, as defined in the Regulations. Furthermore, the Commission agrees that it does appear that, on most days, the CAEB commenced its monitoring prior to 6:00 a.m., the start of the broadcast day as defined in the Regulations. Accordingly, the Commission finds that it is difficult to determine the merits of the CAEB's claims that CHSC was operating in non-compliance with its regulatory obligations. Moreover, the Commission notes that many of the arguments presented by Radio 1540 and CKMW were based on the CAEB's monitoring report.
22. Nevertheless, the Commission notes that, in response to the interventions, Pellpropco acknowledged that CHSC was operating in non-compliance with respect to the broadcast of third-language programming in the broadcast week commencing 13 August 2006. Furthermore, as part of its evaluation of this application, the Commission sought to review the information that it had received regarding CHSC's financial status. In doing

so, the Commission discovered that Pellpropco had not filed its annual return for the 2004 to 2005 broadcast year, despite its obligation under section 9(2) of the Regulations, which states:

On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous August 31.

23. CHSC may therefore have failed to comply with section 9(2) of the Regulations.
24. It is the Commission's longstanding practice to deny licence amendments requested by licensees that are in non-compliance with their regulatory obligations. The Commission does not consider that a departure from this practice is warranted in this case and, therefore, **denies** the application by Pellpropco Inc. for a licence amendment that would have authorized the English-language commercial radio station CHSC St. Catharines to devote up to 40% of its programming to third-language programs.
25. The Commission reminds Pellpropco that CHSC is licensed to serve the St. Catharines' market.
26. With respect to any future application filed by Pellpropco for licence amendments or for the renewal of CHSC's licence, the Commission expects the licensee to clearly indicate the following:
 - the measures it has implemented to correct the incidences of non-compliance described in this decision;
 - evidence that CHSC is currently operating in compliance with its regulatory obligations; and
 - the measures it has implemented to ensure that CHSC is operating in compliance with its regulatory obligations at all times.

Secretary General

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