



Broadcasting Decision CRTC 2007-224

Ottawa, 9 July 2007

King's Kids Promotions Outreach Ministries Incorporated
Peterborough, Ontario

*Application 2007-0164-0 received 31 January 2007
Broadcasting Public Notice CRTC 2007-30
23 March 2007*

CKKK-FM Peterborough – Technical change

*The Commission **approves** the application by King's Kids Promotions Outreach Ministries Incorporated to amend the broadcasting licence for the radio programming undertaking CKKK-FM Peterborough by changing the station's frequency and authorized contours.*

A dissenting opinion from Commissioner del Val is attached.

Introduction

1. The Commission received an application by King's Kids Promotions Outreach Ministries Incorporated (King's Kids) to amend the broadcasting licence for the English-language specialty radio programming undertaking CKKK-FM Peterborough, Ontario. King's Kids proposed to change CKKK-FM's frequency from 99.5 MHz (channel 258LP) to 90.5 MHz (channel 213A1) and to change the station's authorized contours by increasing the effective radiated power (ERP) from 50 to 230 watts, by increasing the antenna height and by relocating the transmitter.
2. CKKK-FM was licensed in Broadcasting Decision 2004-201 to provide a Christian music service. It is required, by condition of licence, to ensure that at least 90% of all musical selections aired during each broadcast week are drawn from subcategory 35 (non-classic religious).
3. King's Kids submitted the current application following the issuance of Broadcasting Decision 2007-99 (the CHUM decision). In that decision, the Commission approved an application by CHUM Limited (CHUM) to convert CKPT Peterborough from the AM to the FM band and to operate the new FM station at 99.3 MHz. The use of frequency 99.3 MHz is technically mutually exclusive with CKKK-FM's current frequency of 99.5 MHz. Consequently, given CKKK-FM's status as a low-power unprotected station, it was required to relinquish its frequency. As part of its application, CHUM made a commitment to assist King's Kids in making the transition to a new frequency.

4. The Commission received interventions in support of the King's Kids application. It also received an intervention commenting on the application from Corus Entertainment Inc. (Corus) and one opposing the application from the Canadian Association of Broadcasters (CAB). The Commission has fully considered all interventions in its review of this application. The record of this proceeding is available on the Commission's Web site www.crtc.gc.ca under "Public Proceedings."
5. After examining the application and the interventions, the Commission finds that the primary issue to be considered is whether it is appropriate to permit CKKK-FM to implement technical changes that would move it from a low-power unprotected status to a Class A1 protected status.

Change from low-power unprotected status to Class A1 protected status

6. The CAB argued that, if CKKK-FM wished to change its status from a low-power unprotected station, it should be required to file an application for a new licence. Such an application would be evaluated using the Commission's policy for assessing applications for new commercial radio services, and might trigger a call for competing applications. The CAB indicated that it "remained concerned about applicant using low-power radio as a springboard to enter the broadcasting system 'through the back door' with few of the regulatory obligations carried by private commercial radio operators."
7. Corus was of the view that, if its own application to convert CKRU Peterborough to the FM band were delayed due to the issuance of a call for competing applications, the King's Kids application should be heard at the same time for the sake of procedural fairness.
8. The Commission notes that CKKK-FM has applied to amend an existing licence. An application for a new licence is not required. In Broadcasting Public Notice 2002-61, the Commission indicated that it may issue calls for competing applications in cases where an existing low-power station files an application to change its operating class to one that has protected status under the Department of Industry's (the Department's) rules. However, the discretion to issue a call rests with the Commission and depends on the circumstances at hand.
9. The Commission notes that King's Kids submitted this application because the CHUM decision obliged it to relinquish its frequency. King's Kids must therefore make changes to its technical arrangements and undertake promotional activities so that listeners become aware of its new frequency. CHUM has provided assistance to the applicant in making this application, but would have no obligation to fund a second application. Funding a second application would have a significant impact on Kings Kids, which is a very small broadcaster with limited resources.

10. The Commission further notes that CKKK-FM will retain its current format and is required, by condition of licence, to ensure that at least 90% of all musical selections aired during each broadcast week are drawn from subcategory 35 (non-classic religious). As such, its operations will have minimal, if any, impact on mainstream commercial radio licensees serving the Peterborough market. The new power and technical contours will also improve the service that it provides to Peterborough, the market that it was originally licensed to serve. The Commission further notes that there are several other protected frequencies still available in the Peterborough area to accommodate future applicants.
11. In light of the special circumstances outlined above, the Commission is of the view that the applicant is not using the application as a “back-door” entry into the mainstream commercial radio market and considers that the application should be dealt with expeditiously.

Conclusion

12. In light of all of the above, the Commission **approves** the application by King’s Kids Promotions Outreach Ministries Incorporated to amend the broadcasting licence for the English-language specialty radio programming undertaking CKKK-FM Peterborough, Ontario by changing the frequency from 99.5 MHz (channel 258LP) to 90.5 MHz (channel 213A1) and changing the station’s authorized contours by increasing the ERP from 50 to 230 watts, by increasing the antenna height and by relocating the transmitter.
13. 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.
14. The Commission reminds the licensee that, pursuant to section 22(1) of the *Broadcasting Act*, this authority will only be effective when the Department notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.

Secretary General

Related documents

- *CKPT Peterborough – Conversion to FM band*, Broadcasting Decision CRTC 2007-99, 23 March 2007
- *Christian music FM radio station*, Broadcasting Decision CRTC 2004-201, 9 June 2004
- *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002

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>

Dissenting opinion of Commissioner Helen del Val

I have carefully reviewed the majority decision and agree with my colleagues that since King's Kids was forced to relinquish its frequency, its application is not a "back door" entry into the mainstream commercial radio market. To characterize its application as such would be unduly harsh. However, I respectfully disagree with the approval of King's Kids' change from unprotected to protected status without requiring it to participate in a competitive process. I would have allowed King's Kids to use the high power frequency for which it has applied but on an unprotected basis until such time as that frequency is needed for a Class A1 radio station or King's Kids finds another low power frequency to operate its station. In the alternative, I would have deferred the consideration of this application until such time as the other applications to provide high power FM radio services for Peterborough are heard.

Additional facts

In addition to the facts set out in the majority decision, I find the following relevant:

1. Broadcasting Decision CRTC 2004-201 which granted King's Kids a licence to operate a low power radio undertaking in Peterborough on June 9, 2004 states in paragraph 12:

"Given that the technical parameters approved in this decision are for a low-power unprotected FM service, the Commission also reminds the licensee that it will have to select another frequency if the Department [of Industry] so requires."
2. Low power frequencies are unprotected so as to ensure that their presence does not pre-empt the operation of high powered stations. This is to facilitate efficient spectrum management. Having accepted that it may have to relinquish the frequency it chose, King's Kids commenced its operations in November, 2004, less than 3 years ago.
3. In examining King's Kids' current application, Commission staff identified 6 high power and 9 low power frequencies as potentially usable. A low power station could use a high power frequency on an unprotected basis until such time as an applicant proposes to use that frequency for a Class A1 station. If all Class A1 frequencies were occupied, other dedicated low power frequencies could be used.
4. In its February 23, 2007 response to deficiencies, King's Kids explained that while it was aware of the availability of other low power frequencies, moving to another low power frequency would not be its preferred choice for a variety of reasons.
5. On June 22, 2007, the Commission issued a call for applications to operate high power FM stations in Peterborough.

Reasons for dissent

Fairness

It is unfair to those applicants vying for protected high power FM frequencies through a competitive process for the Commission to give away one such frequency outside of that process. It is particularly unfair to do so just as a call for radio applications for the Peterborough market is issued.

Other solutions available

The majority decision noted that “there are several other protected frequencies still available in the Peterborough area to accommodate future applicants.” The abundance of frequencies means that there are other solutions open to King’s Kids. Even though it may not be its preferred choice to continue to operate on an unprotected basis, it is not reasonable for King’s Kids to expect to be able to change to a protected status without a competitive process where:

1. it had launched its station less than 3 years ago on the understanding that it may have to select another frequency in the circumstances it now finds itself, and
2. there are other solutions which would enable it to operate as contemplated by the terms of its licence.

Predictability

The disposition of King’s Kids’ application in the manner approved by the majority renders unpredictable the licensing process for high power FM frequencies in the Peterborough market. Corus, who has applied to convert its AM station to the FM band, has had to wait while the Commission considered whether a call for other applications should be issued. Its application will now be subject to a competitive process. Corus’ competitor CHUM, however, was allowed to make an AM to FM flip in the same market without the issuance of a call (albeit pending King’s Kids’ relinquishment of its current frequency). Just as a call for other applications is being issued, King’s Kids is awarded a high power frequency without competitive process. It is difficult to know what to expect.

Conclusion

For the reasons above, I would have allowed King’s Kids to use the high power frequency for which it applied but on an unprotected basis until that frequency is needed for a Class A1 radio station. Since there are several other high and low power frequencies available in the Peterborough market, Kings’ Kids would likely have been able to stay on that frequency for a considerable period of time. That would have enabled King’s Kids to, in due course:

1. develop the business of its relatively new operations and prepare an application for a competitive process if its ultimate goal is to become a Class A1 station; or
2. return with a low power frequency proposal which could be processed expeditiously if it did not wish to participate in any competitive process and a Class A1 station needed the frequency it is using.

In the alternative, I would have deferred King's Kids' application to be considered at the same time as the other applications to operate high power radio undertakings in Peterborough. A deferral would have allowed the Commission to assess globally the Peterborough market and would have been more fair to all those already in or wishing to enter that radio market.