



Broadcasting Decision CRTC 2010-320

PDF Version

Route reference: 2009-157

Additional references: 2009-157-1, 2009-157-2, 2009-157-4, 2009-157-5 and 2009-157-6

Ottawa, 28 May 2010

Various applicants

Québec, Quebec

*Public hearing in Québec, Quebec
26 May 2009*

FM radio station in Québec

*In this decision, the Commission **denies**, by majority vote, an application by Evanov Communications Inc., on behalf of a corporation to be incorporated (Evanov (OBCI)), for a broadcasting licence to operate a new English-language commercial FM radio station in Québec.*

*The Commission also **denies**, by unanimous vote, an application by Evanov (OBCI) for a broadcasting licence to operate a new French-language commercial FM radio station in Québec.*

*Finally, the Commission **denies**, by unanimous vote, an application by Michel Cloutier, on behalf of a corporation to be incorporated, for a broadcasting licence to operate a French-language specialty FM radio station in Lévis.*

A dissenting opinion by Commissioner Timothy Denton is attached to this decision.

Introduction

1. In Broadcasting Public Notice 2008-87, the Commission issued, following the filing of an unsolicited application, a call for applications for broadcasting licences to operate radio programming undertakings to serve the Québec radio market (the Call).
2. In response, the Commission received three applications for licences to operate new commercial FM radio stations to serve the Québec radio market. All three applications were technically mutually exclusive. Two of the applications proposed French-language stations, while the third proposed an English-language station. In this decision, the Commission sets out its determinations concerning the three applications.

Proposed services

3. Evanov Communications Inc., on behalf of a corporation to be incorporated (Evanov (OBCI)), filed an application for a broadcasting licence to operate an English-language commercial FM radio programming undertaking on frequency 105.7 MHz (channel 289C1). The proposed contemporary easy listening format would include a broad range of musical styles and target listeners from 45 to 64 years of age. Evanov (OBCI) committed, by condition of licence, to devote at least 40% of all category 2 (Popular Music) musical selections broadcast during each broadcast week to Canadian selections. Evanov (OBCI) also committed, by condition of licence, to contribute at least \$197,750 to Canadian content development (CCD) over and above the basic CCD contribution over seven consecutive broadcast years.
4. Evanov (OBCI) also filed an application with the Commission for a broadcasting licence to operate a French-language commercial FM radio programming undertaking on frequency 105.3 MHz (channel 287C1), which is a second adjacent frequency to the frequency proposed by the applicant for its English-language service. It proposed a contemporary easy listening music format, and committed, by condition of licence, to devote at least 35% of all category 2 musical selections broadcast during each broadcast week to Canadian selections. Evanov (OBCI) further committed, by condition of licence, to contribute a total of \$2,236,880 to CCD over and above the basic CCD contribution during the seven consecutive broadcast years.
5. Finally, Michel Cloutier, on behalf of a corporation to be incorporated (Michel Cloutier (OBCI)), filed an application with the Commission for a broadcasting licence to operate a French-language specialty FM radio programming, with 40% of its musical selections to be drawn from subcategory 34 (Jazz and blues). The service would operate on frequency 105.7 MHz (channel 289A1), and, therefore, the application is technically competitive with the two applications by Evanov (OBCI).
6. The Commission received interventions in support of and opposing the three applications, as well as general comments on each. The interventions and the applicants' replies may be examined on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

7. The Commission has examined the applications to serve the Québec radio market in light of applicable regulations and policies, the interventions received and the evaluation criteria set out in the Call, which include the factors established in Decision 99-480:
 - the competitive state of the Québec radio market and the impact on the market;
 - the quality of the application; and
 - diversity of voices.

Evaluation of the applications

Evanov (OBCI) – English-language FM commercial radio station

8. Astral Media Radio inc., Cogeco Diffusion inc., Corus Entertainment Inc., Radio-Classique Québec Inc. and RNC Media inc. (the signatories) filed a joint intervention opposing the three applications. In their intervention, they submitted that the Québec radio market is currently unable to accommodate a new private commercial radio station, whether it be English- or French-language.
9. Concerning Evanov (OBCI)'s application to operate an English-language commercial radio station, the signatories stated that the English-language population in the Québec radio market accounts for less than 2% of the total population and is not large enough to sustain a private commercial radio station. They also submitted that at least 90% of Evanov (OBCI)'s intended audience is French speaking, which would have an adverse impact on the existing French-language stations. The signatories concluded that licensing an English-language commercial radio station in the Québec radio market would have the same impact on existing stations as if the Commission had licensed a French-language station, since the new station would draw from the same pool of French-speaking listeners.
10. The signatories also noted that, in Broadcasting Public Notice 2006-101, the Commission announced that it had denied an application by Standard Radio Inc. (Standard) that was similar to Evanov (OBCI)'s application. They pointed out that, at the time, the Commission had determined that Québec's English-language radio market was too small to support the proposed station and that spill-over, in terms of both advertising and audience, was inevitable.
11. In its intervention, Voice of English-Speaking Québec (VEQ) stated that it was in favour of adding an English-language commercial radio station to the Québec radio market. VEQ stated, among other things, that in recent years and indeed for decades, there has been a decline in English-language media in the Québec area. The intervener also criticized the lack of daily media coverage. It noted that the community has to make do with local weekly coverage or daily provincial coverage since no media provide daily local information to Québec's Anglophone community.
12. In accordance with its obligations under the *Broadcasting Act* (the Act) and the *Official Languages Act*, the Commission carefully examined the application by Evanov (OBCI) with respect to its capacity to respond to the specific needs and interests of the English-language community in Québec, which is an official-language minority community. However, as mentioned in its *Report to the Governor in Council on English- and French-language broadcasting services in English and French linguistic minority communities in Canada* (the Report), released 30 March 2009, the factors related to official language minority communities do not take precedence over other factors that the Commission must take into account. In this respect, the Commission must consider all of the objectives flowing from the Act as a whole.

13. The Commission has evaluated the needs of Québec's English-language community by examining the services already present in the market and their target audience, as well as the information provided by the applicant in the application. In addition, it took into account the single supporting intervention from the English-language community in the Québec region – that by VEQ.
14. The Commission notes that Québec's current radio market has very few English-language listeners. In 2006, the number of people who spoke English most often at home totalled only 7,420, or 1.1% of Québec's population.¹ This means that for all practical purposes there is virtually no advertising market in Québec for an English-language station. The Commission is therefore concerned about the possibility raised by the signatories that Evanov (OBCI)'s proposed station would focus on French-language listeners.
15. The Commission further notes that the proposed English-language station would also target the Québec region's already limited and difficult tourist advertising market. As such, it would undermine the efforts of CJNG-FM Québec, an English-language tourist radio station operated by La Radio touristique de Québec inc., to become profitable. The Commission notes that, despite having been in operation for three years, this station has not become profitable. It is of the view that the entry of an English-language FM commercial radio station in the Québec radio market would only exacerbate CJNG-FM's already precarious financial situation.
16. The Commission is forced to conclude that a service that is limited to serving Québec's Anglophone community can never be profitable. Indeed, in terms of the provision of English-language broadcasting services, a significant change occurred between the denial of the Standard application in 2006 and the submission of Evanov (OBCI)'s application, specifically, the disappearance of a local English-language television station, as VEQ noted during the public hearing. This change demonstrates the precarious nature of a business that depends on English-language advertising in the Québec radio market.
17. The Commission considers that the details provided by the applicant clearly demonstrate that its service is almost entirely dependent on Québec's French-language audience. The Commission fails to see how a commercial programming undertaking that will realize its revenues almost exclusively from a Francophone audience would respond to the specific needs of Québec's small English-language community.
18. The Commission notes that Evanov (OBCI)'s proposed station would not be required to comply with requirements concerning the broadcast of French-language vocal music. This would give the station a definite advantage, in terms of audience, over the existing French-language stations in the Québec radio market.

¹ Source: Statistics Canada, 2006 Census

19. For all these reasons, the Commission considers that it would not be appropriate to approve Evanov (OBCI)'s application to operate an English-language commercial FM radio station to serve Québec.

Evanov (OBCI) – French-language commercial FM radio station

20. In their joint intervention, the signatories stated that since 2007 three commercial radio stations have been added to the Québec radio market, bringing the total to 10. They also submitted that the market is still trying to adjust to these entrants, noting that 2008 could not be considered a normal year because of Québec's 400th anniversary celebrations. The signatories added that 2009 saw the worst recession since 1929. Consequently, the impact of the three new stations on the market cannot be properly assessed until 2010 or perhaps 2011.
21. The signatories submitted that the entry of a new station would increase competition for advertising revenues, which could have an adverse impact on existing stations. They submitted that, while overall advertising revenues grew by 7.5% between 2003 and 2007, this growth coincided with a 28.6% increase in the number of private commercial radio stations. As a result, advertising revenues per station fell by 16% during this period.
22. In spite of the strong performance of the Québec radio market in 2009 resulting from an increase in revenues close to 8%, five of the 10 commercial radio stations in the market are still unprofitable. Accordingly, even if the Commission views the growth of advertising revenues in the market in positive terms, the current situation does not favour the entry of a new station, particularly if the new station cannot benefit from synergies with an existing station.
23. In addition, the Commission notes the concerns raised by the signatories about several factors that have upset the Québec radio market since 2007. These factors include, among other things, the celebrations of the 400th anniversary of Québec, the short-term suspension of TQS's operations, as well as the addition of new radio stations. Although the market achieved a profit before interest and tax (PBIT) of about 16% in 2009, the market's PBIT was only marginally positive as recently as 2007. The Commission is therefore of the view that the absence of new competitors in the short and medium terms would permit the Québec radio market as a whole to achieve a level of financial stability that it has not enjoyed in many years.
24. The Commission considers that the French-language station proposed by Evanov (OBCI) would introduce a new voice to the Québec radio market, and that its programming could be of interest to a particular audience. However, the proposed contemporary easy listening format is substantially similar to the formats of CFOM-FM, CJEC-FM and CITF-FM Québec, all of which currently serve the Québec radio market. The Commission considers that this format would contribute only minimally to increasing musical diversity in that market, given that it is already widely available.

25. The Commission notes that, in response to questioning, Evanov (OBCI) stated that, if it had to choose between its two proposed stations, it would opt for a licence for the English-language station. It added, however, that the ideal situation would see licences for both stations, because of the potential synergies that would be available in such a case. In this regard, the Commission further notes that, although Evanov (OBCI)'s applications are for stations in two different languages, it proposed the same music format and target audience in both.
26. Finally, the Commission notes that Evanov (OBCI), for its French-language service, proposed a second adjacent frequency to the frequency for its proposed English-language service. Such technical parameters are not permitted by the Department of Industry without the consent of the broadcasters affected. Although it can be assumed that Evanov OBCI would give its consent if its applications were approved, the applicant has failed to demonstrate to the Commission's satisfaction that this arrangement would not be detrimental to one or both frequencies. The Commission therefore considers that the only frequency available for a broadcasting undertaking in the Québec radio market is in fact the frequency proposed for the English-language service.
27. In light of the above, the Commission considers that it would not be appropriate to approve Evanov (OBCI)'s application to operate a French-language commercial FM radio station to serve the Québec radio market.

Michel Cloutier OBCI

28. The Commission notes that the business plan filed by Michel Cloutier (OBCI) is weak. As well, it is not convinced that a station providing the proposed jazz and blues format is appropriate for the Québec radio market, given that the applicant's proposed service area includes only the city of Lévis.
29. The Commission notes the applicant's desire to focus on the community nature of its proposed station to reassure the Commission and the stations in the Lévis radio market on the potential financial impact that it may have on that market. The Commission thus has concerns about the proposed station's intended purpose and about its overall feasibility and viability.
30. Furthermore, the applicant was vague about the number of hours of programming to be produced by volunteers, and how it would replace programs if the station could not recruit a sufficient number of volunteers to implement its initial plan.
31. The Commission notes that several Canadian radio stations offering the jazz and blues format have very low audience shares and, consequently, are in financial difficulty. It considers that, in light of this factor and given that, within the Québec radio market, the proposed station would serve only Lévis, the station's chances of surviving are minimal.
32. For all these reasons, the Commission considers that it would not be appropriate to approve the application by Michel Cloutier (OBCI) to operate a French-language specialty FM radio station to serve the city of Lévis.

Conclusion

33. In light of the above, the Commission **denies**, by majority vote, the following application for a broadcasting licence to operate an English-language commercial FM radio programming undertaking in Québec:

- **Evanov Communications Inc., on behalf of a corporation to be incorporated**
Application 2008-1088-9, received 14 August 2008

34. In addition, the Commission **denies**, by unanimous vote, the following applications for broadcasting licences to operate French-language commercial FM radio programming undertakings in Québec:

- **Evanov Communications Inc., on behalf of a corporation to be incorporated**
Application 2008-1622-5, received 2 December 2008
- **Michel Cloutier, on behalf of a corporation to be incorporated**
Application 2008-1132-4, received 21 August 2008

Secretary General

Related documents

- Notice of consultation – Broadcasting Public Notice CRTC 2008-87, 3 October 2008
- *Licensing of new radio stations and licence amendments for radio stations in the area of Québec, Quebec – Introduction to Broadcasting Decisions CRTC 2006-348 to 2006-351*, Broadcasting Public Notice CRTC 2006-101, 10 August 2006
- *Introductory statement – Licensing new radio stations*, Decision CRTC 99-480, 28 October 1999

**This decision is to be appended to the licence.*

Dissenting opinion of Commissioner Timothy Denton

I have had the opportunity of reading the reasons of the majority in relation to Evanov Communication Inc.'s (Evanov) application for a broadcasting licence to operate an English-language FM radio station in Quebec City. In my respectful opinion, the decision taken by the majority is mistaken in several respects. In the paragraphs that follow, I outline why I think so by reference to points made in the majority decision.

1. Opposition of the existing market occupants

Given the realities of a regulated market such as broadcasting, the incumbents in the Quebec City market would have been remarkably generous, even misguided, if they had not opposed greater economic competition from whatever quarter. They could not be expected to do otherwise. The concern of the existing commercial rivals may be based on a well-reasoned apprehension that the Evanov English-language radio station would be highly successful, if licensed, and that it would find a welcoming audience in Quebec City's francophones.

2. Regulatory burdens on French-language radio

The premise of the majority opinion seems to be that the French-language market is something that should not be competed for by an English-language radio competitor. By this logic, if a French-language listener preferred an English-language station, whether for musical format, learning the English language, or for any other reason, something would be amiss. For instance, the heavier burden of French-language content on French stations is used as an argument against English-language competition. Noting the small size of the English-language population of Quebec City, the majority observes that:

The Commission is therefore concerned about the possibility raised by the signatories that Evanov OBCI's proposed station would focus on French-language listeners.

If the people of Quebec City wish to listen to English-language radio, or any foreign-language radio, it is not the concern of the federal government to prevent it. People are free in principle to listen to what they like. In particular, they are free to listen to radio programs in the other official language, where those are available. In my opinion the majority of the panel in this case appears to believe the contrary. Otherwise why would the majority be concerned with the possibility of French-language listeners tuning into an English-language station in Quebec City?

And further at paragraph 18:

The Commission notes that Evanov OBCI's proposed station would not be required to comply with requirements concerning the broadcast of French-language vocal music. This would give the station a definite advantage, in terms of audience, over the existing French-language stations in the Québec radio market.

This argument can be faulted, because it is essentially the claim that because someone has placed rocks in their own knapsack, they are less able to compete in a long distance march against people who are under no such burden. This may be true, in fact, but it lacks moral persuasiveness. It argues more for the lightening of the load on those with rocks in their knapsacks than that the potential competitor should be disqualified for failing to handicap himself.

It is a fact that French-language radio stations have larger French-language Canadian content obligations, the operation of which is claimed to hinder their economic competitiveness with English-language radio stations in the same market.

A reader untutored in the mysteries of Canadian broadcast regulation might gain the impression from the argument of the majority that some hidden forces had saddled French-language radio with heavier regulatory burdens, possibly in an effort to make them less competitive. Nothing could be further from the truth.

Anyone acquainted with the history of these regulatory decisions will be aware, however, that the regulatory burdens placed upon French-language radio have been placed upon them by initiatives of regulators wanting to foster the French language, in an effort to preserve and promote French-language musical content. No regulator would dare or has ever dared to dispute these initiatives. Promoting French-language music is a valid and worthy objective, but it seems strange to use the regulatory burden on French-language radio as a valid moral claim that English-language radio must somehow be precluded in the Quebec City market.

3. Economic viability of the Evanov application

The record of the Evanov group shows that they have been able to make money out of small markets and against entrenched competition. They seem to be experts in profitably mining thin veins of ore. I was impressed with their business acumen and the quality of their management personnel. At paragraph 16, the majority opinion states:

The Commission is forced to conclude that a service that is limited to serving Québec's Anglophone community can never be profitable.

Since the service would not be confined to serving only the Anglophone population, if it were licensed, the conclusion above is true, but of no particular value. The service would attract French-language listeners and advertisers. The issue for us is whether the competitive harm to the existing Quebec City radio market trumps both the interest in greater language diversity in the choices available to Quebec City listeners and the interests of Anglophones in more programming in their own language.

As to the concern that a radio station should *not* in principle serve both the French-language and English-language communities, my disagreement has been made clear.

As to the contention that the English-language radio market in Quebec City would be “precarious,” the Evanovs are mature adults of capitalist inclinations and they can take risks more knowledgeably than most of us. If they fail, it is not the Commission’s task to support them. Some previous commercial stations broadcasting in English in Quebec City have failed, and this one may fail too.

4. Responding to the needs of Quebec’s English-language community

At paragraph 17, the majority opinion states:

The Commission considers that the details provided by the applicant clearly demonstrate that its service is almost entirely dependent on Québec’s French-language audience. The Commission fails to see how a commercial programming undertaking that will realize its revenues almost exclusively from a Francophone audience would respond to the specific needs of Québec’s small English-language community.

I have a suggestion for how it might respond to the *specific* needs of Quebec City’s minuscule English-language community: the programming would be in English. *Nothing more is needed.* There is not some special cultural need of Quebec City’s English-language minority that needs to be catered to, other than to occasionally hear something other than the CBC on the radio. This is not a complaint about CBC-Quebec City. It is an observation about the needs of Quebec City anglophones, which are not specific to Quebec City but are common to all linguistic minorities everywhere.

To the English-speaking radio listener in Quebec City, and anyone else seeking broader choice, I would advise them to liberate themselves from the broadcast radio dial and get Internet radio, where spectrum scarcity has no role in restricting choice.

5. Other considerations

a) This a decision of the hearing panel

It must be appreciated that broadcasting decisions are made by panels of commissioners rather than by the whole set of thirteen commissioners. The other eight commissioners may deplore, dispute, or support this decision, but they have no say in it. Thus, when the decision is published, it will read “the CRTC decides,” but in fact it is the panel which has decided.

b) How will this decision appear to the public?

The basic issue that every thinking Commissioner must ask himself is how a decision will be perceived by the public.

There are a number of French-language communities located outside Quebec which are served by French-language commercial radio stations. They include, for instance,

- CHYK-FM Timmins is a French-language commercial station. The “French only” mother tongue population of the Timmins CA (16,405) represents 39% of the total population (42,450).
- CHYC-FM Sudbury is a French-language commercial station. The “French only” mother tongue population of Greater Sudbury (42,940) represents 28% of the total population (155,995).
- CHOY-FM is a French-language commercial station located in Moncton. The “French only” mother tongue population of the Moncton CMA (42,925) represents 35% of the total population (124,055).

The comparison figures show that the Commission has been solicitous to license French-language commercial radio stations in majority English-language markets. The examples also show that the French-language populations in these markets are more significant than is the English-language population of Quebec City, which numbers slightly over 7,000.

This fact lends credence to the contention of the majority, cited above, that the Evanov station would gain listenership and advertising from the French-language market, as well as from the English-language population. The larger French-language populations in these other English-majority markets also remind us that a commercial station needs a significant market on which to base itself.

Thus, we are back to the basic concern that the Evanov application could not be profitable unless directed to the francophone market, in some manner, and that this fact is of more importance than the improvement of service to an official language minority. My contention is that both markets benefit by greater choice in both languages available and in musical formats.

I would like to consider radio licensing from a different perspective. I would like to give greater weight to the interests of the people of Quebec City, in this case, anglophone and francophone alike, and consumers in general, in the regulation of broadcasting. The outcomes which the *Broadcasting Act* (the Act) frequently inclines the Commission to produce are oriented to the interests of producers, and it would be helpful if the Act would direct us to give greater weight to the interests of consumers in broadcasting issues. That is a battle for another day.

Given that the reasoning of the Commission in this instance is unlikely to be different in the future, having regard for the reasoning of the majority, the anglophone citizens of Quebec City may wish to consider establishing a community radio station, which is a class of licence that would be eligible for federal subsidies. This approach, rather than a commercial station, may be more suited to their needs.

6. Conclusion

My concern is for both the English-language and French-language populations of Quebec City. The interest of francophones in greater choice is as real as the interest of Quebec City Anglophones in another English-language service is immediate and pressing.

My judgement is influenced by both elementary considerations of fairness and a considered judgement that the Evanov group had a viable commercial proposition.

My colleagues in the majority clearly consider that the Evanov proposal might have been profitable, but at an unacceptable cost to the local francophone radio market. Maybe the current rules impose an unacceptable set of competitive conditions on French-language radio. My colleagues are certainly in good faith. For my part, I have weighed the factors differently, and there I shall let the matter rest.