



## Broadcasting Information Bulletin CRTC 2010-341

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### Revised guidelines for the application of the Common Ownership Policy for Radio

*In this information bulletin, the Commission sets out guidelines for the application of the Common Ownership Policy for Radio (the Policy) related to:*

- *determining the number of stations within a market that are commonly owned in cases where a licensee also owns stations in adjacent markets; and*
- *determining if exceptions to the Policy should be granted.*

#### Introduction

1. As its first objective, the Common Ownership Policy for Radio (the Policy) ensures a plurality of ownership within the private commercial element of radio broadcasting, and that Canadians thus have access to a variety of editorial voices within the radio component of the broadcasting system.
2. A secondary objective of the Policy is to maintain a balance of competition between radio broadcasters in any particular market.
3. Over the past four years, the Commission has dealt with several applications for new stations and changes of ownership that have breached the Policy. Following the Commission's practice, applicants were therefore requested to justify exceptions to the Policy, even in cases where the diversity of voices and the balance of competition in a market might not have been significantly affected. Most of the applications for exceptions were denied.
4. The Commission will continue to ensure that applications that invoke the Policy and in actual fact affect the diversity of voices and the balance of competition among broadcasters in Canadian markets are provided careful consideration. However, others that invoke the Policy but have negligible consequences will be dealt with according to the guidelines set out in this Information Bulletin. The guidelines will help distinguish between these two types of applications, all the while maintaining the objectives of the Policy, and will provide more clarity and predictability for the broadcasting system.

#### Background

5. The Policy states that, in markets with fewer than eight commercial stations operating in a particular language, a person<sup>1</sup> may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band. In

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<sup>1</sup> As set out in the *Radio Regulations, 1986*, a person "includes an individual, partnership, a joint venture, an association, a corporation, a trust, an estate, a trustee, an executor and an administrator, or a legal representative of any of them."

markets with eight commercial stations or more operating in a particular language, a person may be permitted to own or control as many as two AM and two FM stations in that language.

The *Radio Regulations, 1986* define “market” as follows:

- a) in the case of an AM station, the AM daytime 15 mV/m contour or the central area as defined by the Bureau of Broadcast Measurement (BBM), whichever is smaller,
  - b) in the case of an FM station, the FM 3 mV/m contour or the central area as defined by the Bureau of Broadcast Measurement (BBM), whichever is smaller.
6. Rare exceptions to the Policy have been granted where, due to adverse economic circumstances, the survival of radio stations has been in serious doubt. The Commission has also stated that exceptions may be permitted to address severe technical limitations.
  7. Currently, the Policy is invoked whenever a broadcaster seeks to add a station in a market where its ownership of stations is already at one of the limits described above. Applications to amend licences that envisage increases in the coverage areas of existing stations may also invoke the Policy. It is also invoked whenever there is overlap between the contours of a proposed station in a given market and the area covered by an adjacent market where the applicant already operates two stations on the same band. This applies to any case of overlap, even if approval of an application entailing a minor overlap would not significantly affect the diversity of voices and the balance of competition in a market. It has been the Commission’s practice to deny such applications where the justifications for exceptions are not based on serious economic or technical circumstances.
  8. In light of an analysis of recent cases where the Policy has been applied, the Commission has determined that, based on the population contained within an overlap:
    - there is a point of overlap below which the diversity of voices or the balance of competition in markets would not likely be significantly affected, should an application be approved; and
    - there is a point of overlap above which the current requirement for a persuasive rationale based on serious economic or technical circumstances would continue, because of the extent of the overlap.

Between these two points, the Commission considers that certain factors would need to be examined in order to determine whether or not the diversity of voices or the balance of competition would be affected.

9. The AM and FM signals from most commercial stations are receivable for many kilometres beyond their 15 mV/m or 3 mV/m contours, respectively, where reception conditions are favourable. In many cases very significant populations reside in these areas.<sup>2</sup> This characteristic of radio broadcasting has been an important consideration in the development of these guidelines.

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<sup>2</sup> The Commission uses MapInfo and PCensus software to calculate the populations within contours and overlapping areas.

10. In setting out its guidelines for the application of the Policy below, the Commission discusses the following:

- the determination of the number of existing stations operated by a person in a market in a particular language, and
- the determination of whether that person would henceforth be required to present a justification for an exception to the policy based on serious economic or technical circumstances when it applies for a new licence, a transfer of ownership of an existing station, or a change in technical parameters of a station in that market or in an adjoining market.

### **Determining the number of commonly owned stations within a market**

11. In areas where communities and radio markets are close together, the contours of stations licensed to serve those communities frequently overlap into adjacent markets. In cases where a licensee owns a station or stations in the adjacent market and applies for an additional radio service whose coverage would include portions of that market, a determination is needed as to the number of stations currently operated by that person in a particular language in both markets.

- Where the population in the overlapping area constitutes 15% or more of the population of the market, the existing station will be included when assessing the number of stations operating in a particular language in that market.
- Where the population in the overlapping area comprises 5% or more, but less than 15% of the market, the Commission will give consideration to the following factors:
  - whether the station in question accepts advertising from local businesses in that market, and
  - whether that station broadcasts news and public affairs coverage of particular interest to listeners in that market.

That station will be included in assessing how many of that owner's stations operate in a particular language in that market unless the answers to both of the above questions are negative.

- Where the population in the overlapping area includes less than 5% of the population of the market, the station will generally be excluded when assessing the number of stations operated by that person in a particular language in that market.

### **Determining whether approval of an application must be justified by economic or technical reasons**

12. Applications that raise concerns in regard to the Policy will be examined to determine the extent to which the 15 mV/m or 3 mV/m contour of the proposed station enters a market where the applicant owns stations operating in a particular language.

- In the case of an application where the population in the overlapping area constitutes 15% or more of the population of that market, the Commission will, as a general rule, deny the application.
- In the case of an application where the population in the overlapping area constitutes 5% or more, but less than 15% of that market, the Commission will examine the application, giving consideration to the following factors:
  - whether approval of the application might affect competitive balance in the market, and
  - whether, because of a large discrepancy in the size of the markets served by the relevant stations, approval would be likely to affect the orientation of news and public affairs coverage.

Only where the answers to these questions are negative will the application generally be approved, and a justification based on serious economic or technical circumstances will not be required.

13. A third factor could become relevant in large markets, where the concern about diversity of voices might be mitigated because a substantial number of radio station owners serve the market.

- In the case of an application where the population in the overlapping area in the adjacent market constitutes less than 5% of that market, the application would generally not raise concerns when examined in the light of the three factors presented above and will therefore be processed expeditiously.

### **Vacant frequencies**

14. The Commission will continue to assess whether approval of an application would result in a situation where there would no longer be a vacant frequency for use by a new player in the future. Such a circumstance would generally give rise to a call for applications.

Secretary General