



## Broadcasting Decision CRTC 2012-307

PDF version

Route reference: 2011-398

Additional references: 2011-694 and 2011-695

Ottawa, 24 May 2012

### **CKIK-FM Limited**

Calgary, Alberta

*Application 2011-1347-2, received 28 September 2011*

*Public hearing in Calgary, Alberta*

*6 February 2012*

### **CHQR Calgary – New FM transmitter in Calgary**

*The Commission finds that the additional FM presence that would result from approval of the application to amend the broadcasting licence for the AM radio station CHQR Calgary by adding an FM transmitter in Calgary would undermine the Common Ownership Policy by adversely affecting competitive balance and diversity in this market. The Commission also finds that the applicant has not provided sufficient justification to warrant the granting of its application on its own merits. Accordingly, the Commission denies the application.*

#### **Introduction**

1. In Broadcasting Notice of Consultation 2011-398, the Commission called for applications for a broadcasting licence to operate a commercial radio service for Calgary. In Broadcasting Notice of Consultation 2011-694, the Commission announced that it had received and retained 11 applications for broadcasting licences to operate new radio programming undertakings to serve Calgary. The Commission's determinations with respect to the competitive applications for a new commercial radio service in Calgary are set out in Broadcasting Decision 2012-308, also issued today.
2. In response to Broadcasting Notice of Consultation 2011-398, the Commission also received an application by Corus Entertainment Inc. (Corus), on behalf of its wholly owned subsidiary CKIK-FM Limited. Corus proposed to amend the broadcasting licence for the commercial AM radio programming undertaking CHQR Calgary by adding a nested FM rebroadcasting transmitter<sup>1</sup> in Calgary. The transmitter would

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<sup>1</sup> A "nested" FM rebroadcasting transmitter is a transmitter located within the coverage contours of the originating station to supplement coverage to an area experiencing reduced signal quality.

operate on frequency 106.9 MHz (channel 295A) with an effective radiated power of 1,000 watts (non-directional antenna with an effective height of antenna above average terrain of 243.6 metres). The applicant stated that the proposed transmitter would provide a reliable high-quality signal on the FM band to listeners in downtown Calgary who are no longer able to obtain satisfactory reception of CHQR on the AM band.

3. Corus currently owns two FM radio stations in Calgary, CFGQ-FM (through CKIK-FM Limited) and CKRY-FM (through Corus Radio Company). There are currently 17 commercial radio stations operating in the Calgary market.
4. According to the Commission's Common Ownership Policy, which was confirmed in Broadcasting Public Notice 2008-4, a person may be permitted to own or control as many as two AM and two FM stations in a given language in markets with eight or more commercial stations operating in that language.
5. Corus submitted that the addition of the FM rebroadcasting transmitter to the broadcasting licence for CHQR would not represent a new FM service as the new transmitter would simply rebroadcast the programming of CHQR within its existing contours and that it would therefore be fully compliant with the Common Ownership Policy. Corus added that if the Commission were to consider that the proposed FM transmitter would count as a third FM presence in the market under the Common Ownership Policy, it requested that the Commission grant an exception to this policy in light of the unique circumstances associated with its application.
6. Accordingly, in Broadcasting Notice of Consultation 2011-695, the Commission called for comments on whether the proposed FM rebroadcasting transmitter would constitute a third Corus-owned FM station in the Calgary market and if so whether the Commission should consider granting an exception to its Common Ownership Policy for radio and maintain the consideration of Corus's application as part of the Calgary public hearing announced in Broadcasting Notice of Consultation 2011-694.
7. In response to Broadcasting Notices of Consultation 2011-694 and 2011-695, the Commission received interventions in support of the application, comments by Astral Media Radio Inc. (Astral) and Rogers Broadcasting Limited (Rogers) and opposing interventions by Bell Media Inc. (Bell) and Multicultural Broadcasting Corporation Inc. (MBC).
8. The Commission maintained the consideration of Corus's application at the Calgary hearing in order to discuss with the licensee and other parties the specific merits of the application and the best use of the proposed frequency, as well as to complete the record relating to Broadcasting Notice of Consultation 2011-694.
9. The public record for the above-noted proceedings is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings." Having examined the public record for these proceedings in light of applicable policies and regulations, the Commission considers that the issues it must address are the following:

- Would authorizing the proposed FM rebroadcasting transmitter for CHQR Calgary be consistent with the Common Ownership Policy?
- If not, should the Commission consider granting Corus an exception to the Common Ownership Policy?

**Would authorizing the proposed FM rebroadcasting transmitter for CHQR Calgary be consistent with the Common Ownership Policy?**

**Positions of parties**

10. Astral and Rogers both submitted that the use of a nested FM rebroadcasting transmitter would not represent a new FM station in the market and thus would be in line with the Common Ownership Policy. In support of its position, Astral argued that the primary purpose of the FM rebroadcasting transmitter would be to correct signal deficiencies and noted that the programming broadcast on the transmitter would be identical to that offered by CHQR. Rogers also noted that the proposed transmitter would rebroadcast the signal of CHQR within its currently authorized contours.
11. Bell and MBC submitted that the addition of the proposed FM transmitter would constitute a new FM station in the market. In support of its position, Bell submitted that the Commission examined the same issue when it denied an application by Corus in Broadcasting Decision 2007-350, while MBC noted that the Central Market Area (CMA) of Calgary was almost entirely enveloped within the proposed 3 mV/m contour and that the most populated rural areas would be enveloped in the proposed 0.5 mV/m contour. MBC also submitted that approval of Corus's application would increase the concentration of ownership by allowing Corus to achieve a market share of over 25%, would preclude the licensing of MBC's proposed station on 106.7 MHz and would detract from diversity in the Calgary market.
12. In reply, Corus maintained that its proposal was in compliance with the Commission's existing policies and regulations and argued that the proposed transmitter would not represent a new FM station. Specifically, it noted that the Common Ownership Policy refers to the number of "stations" owned or controlled in a market. It added that the proposed transmitter did not correspond to the definition of an FM station in the *Radio Regulations, 1986* (the Regulations) and that approval would not entail the issuance of a licence for a new FM station. It further noted that its proposal for a nested FM transmitter was consistent with the Commission's own definition of the purpose of a nested FM transmitter, which is to correct signal deficiencies within certain areas of the market served by the originating station.
13. Corus further argued that Bell's assertion that Broadcasting Decision 2007-350 relating to CJOB Winnipeg should serve as a precedent was not valid, noting that the Winnipeg application involved the proposed use of a Class C frequency at 100,000 watts that would have extended CJOB's coverage, whereas the present application was for a Class A frequency with a power level of 1,000 watts within CHQR's existing contours. Finally, Corus argued that MBC's claim regarding Corus's market

dominance was not relevant, noting that MBC had provided no evidence to support its conclusion that Corus would achieve a 25% market share and stating that it did not expect a significant increase in its overall tuning share as a result of its nested FM transmitter.

#### **Common Ownership Policy for radio**

14. In Public Notice 1998-41, the Commission introduced its current Common Ownership Policy for radio. The Commission noted that the restriction of the ownership of stations in a market is one of its most effective tools to ensure that a diversity of voices exists in a community. In maintaining a concern with respect to concentration of ownership in a market, this policy included the objectives of preserving the availability of distinct news voices in a community and ensuring that true competition and a diversity of format are available in a market. In implementing what it considered at the time a balanced and reasonable approach, the Commission decided that in markets with less than eight commercial stations operating in a given language, a person 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 markets with eight or more commercial stations operating in a given language, a person may be permitted to own or control as many as two AM and two FM stations in that language.
15. The Commission maintained this approach in its most recent Commercial Radio Policy as set out in Broadcasting Public Notice 2006-158, as well as in its Diversity of Voices Policy set out in Broadcasting Public Notice 2008-4. In the Diversity of Voices Policy, the Commission also noted the following objectives:
  - to provide access within the Canadian broadcasting system to a diversity of voices through broadcasting services from the public, private and community elements;
  - to ensure plurality of ownership within the private element of the Canadian broadcasting system;
  - to ensure that audiences have access to a diversity of programming, especially national, regional and local content;
  - to ensure that any further consolidation in the Canadian broadcasting system provides a net benefit to Canadian audiences and to the creation of Canadian programming; and
  - to restrict ownership only when it is necessary to achieve the above objectives and to do so in a manner that is simple, clear and effective.
16. In elaborating its Diversity of Voices Policy, the Commission examined the proposal to relax common ownership restrictions in radio by eliminating the distinction between AM and FM stations in the calculation of the overall number of stations a

person would be permitted to own or control in a given market. However, the Commission found that such a change would not result in an increase in the diversity of voices in a market and that the small number of available FM frequencies in many markets would make this proposal impracticable.

17. Accordingly, while the Commission remains mindful of the need to restrict ownership only where necessary, its Common Ownership Policy for radio is nevertheless based on a need to balance the forces of consolidation with a concern for diversity, increased scarcity of spectrum and the general public benefit.

#### **Commission's analysis**

18. The Commission notes that the Corus application seeks to address certain signal deficiencies in the Calgary downtown core and along the LRT tracks by the addition of the proposed transmitter.
19. As Corus accurately noted, the Regulations define an FM station as follows: “‘F.M. station’ means a station that broadcasts in the F.M. frequency band of 88 to 108 MHz, but does not include a transmitter that only rebroadcasts the radiocommunications of a licensee.” However, the Commission notes that while the proposed nested FM transmitter would not extend the coverage of CHQR, it would nonetheless grant CHQR coverage of the majority of the Calgary population in the FM transmitter’s 3 mV/m contour and the entire population of the Calgary CMA within its 0.5 mV/m contour. Therefore, the proposed transmitter would represent a new FM presence in the market. In all likelihood, this new presence would attract some incremental tuning and could attract revenues for CHQR.
20. Further, as noted above, the objective of the Common Ownership Policy is not simply to limit the number of stations owned by a person in a given market. Rather, the objective is to use these limitations to achieve the broader goals of that policy. Whether dealing with stations or other presences, the Commission’s concern lies first and foremost with concentration of ownership and its effects on the diversity of programming. Equally important are the competitive state of the market (and specifically concerns for smaller operators in the market), the diversity of news and editorial voices and the efficient use of spectrum.
21. In this case, the Commission considers that the Corus proposal could have the effect of migrating significant portions of CHQR’s audience from its AM station to its proposed FM transmitter due to the better sound quality of an FM signal. Given that the proposed transmitter’s coverage would span the entire Calgary CMA, the Commission considers that the transmitter would constitute an FM presence in the market equivalent in practice to an FM station. Therefore, the Commission considers that for the purposes of the application of the Common Ownership Policy, Corus would own and control three FM stations in the Calgary market. The Commission also notes that there would be no new programming or other diversity added to the Calgary market and that Corus would enjoy the regulatory flexibilities afforded to

AM stations, including the ability to change its format, without being held to a minimum requirement for local programming.

22. For these reasons, the Commission finds that its longstanding Common Ownership Policy for radio applies to the current application and that approval of this application would require an exception to that policy.

### **Should the Commission consider granting Corus an exception to the Common Ownership Policy?**

#### **Positions of parties**

23. Astral submitted that an exception to the Common Ownership Policy would be warranted in the event that the Commission concluded that Corus's proposed transmitter would represent a new FM station in the market.
24. While Rogers took no position as to whether the Commission should grant an exception, it did note that if the Corus application were approved, it would assume that the Commission would be prepared to approve similar applications by AM licensees facing similar technical issues.
25. Bell and MBC submitted that an exception to the Common Ownership Policy was not justified. Bell argued that CHQR was neither experiencing adverse economic circumstances nor severe technical limitations. It further noted that Corus's reception problems were not unique to CHQR as all urban AM stations experience the same technical issues and submitted that CHQR was better positioned than any other AM Calgary station to reach its listeners given that it operates at the lower end of the AM band on 770 kHz. Finally, Bell argued that the signal limitations were not impacting the station's performance in the market, noting that CHQR enjoyed the largest share of tuning of all Calgary stations. Similarly, MBC noted that the extent of the technical difficulties was limited to a small subset of the entire BBM CMA of 1.195 million potential listeners, given that Corus identified 37,000 people living in the downtown core of Calgary in 2011.
26. In reply, Corus stated that it should be granted an exception if necessary on the basis that it had met the threshold criterion set out in paragraph 6 of Broadcasting Information Bulletin 2010-341, which states that the Commission may grant exceptions to the Common Ownership Policy to address severe technical limitations. Corus noted that it did not provide any financial justification for the simple reason that it did not apply for a nested FM on the basis of economic need.

#### **Commission's analysis**

27. In Broadcasting Information Bulletin 2010-341, the Commission set out its revised guidelines for the application of the Common Ownership Policy for radio. The Commission noted that rare exceptions to the Common Ownership Policy have been granted where due to adverse economic circumstances the survival of a radio station

has been in serious doubt. It further stated that exceptions may also be permitted to address severe technical limitations.

*Adverse economic circumstances*

28. The Commission notes that Corus confirmed that its application was not filed on the basis of economic need. The Commission also notes that CHQR remains profitable, with healthy and sustained revenues, as well as a strong audience share. The Commission therefore concludes that there is no compelling adverse economic circumstances which would justify the need for an exception to the Common Ownership Policy.

*Severe technical limitations*

29. With respect to the severe technical limitations criterion, the Commission notes that AM signals are sensitive to electromagnetic interference caused by electronic apparatus and power lines. AM signals are also affected by buildings and other large metallic structures and are therefore significantly more affected in larger metropolitan areas. The Commission further notes that Corus is targeting residents in Calgary's downtown core, as well as workers and commuters. In support of its arguments for an FM rebroadcasting transmitter, Corus submitted the results of three radio listener studies conducted in 2007, 2009 and 2011.
30. As stated in Broadcasting Information Bulletin 2010-341, exceptions to the Common Ownership Policy may be permitted to address severe technical limitations. The Commission acknowledges that the technical issues experienced by CHQR are legitimate. However, the Commission notes that CHQR is not subject to any more interference than other AM stations operating in major urban centers. The Commission is of the view that CHQR's technical limitations do not qualify as severe given that these technical issues are inherent to the operation of all AM stations in major urban markets. Accordingly, the Commission finds that Corus' situation does not meet the severe technical limitations criterion for an exception to the Common Ownership Policy.

**Conclusion**

31. As noted above, the restriction of ownership is a tool the Commission uses to ensure diversity in a given market. This was the primary objective of the Common Ownership Policy for radio as stated in the Commission's 1998 policy and remains a key concern in its most recent Diversity of Voices Policy. The Common Ownership Policy for radio has been implemented in a more flexible fashion in areas where communities and radio markets are close together in order to ensure that a minimal overlap between contours does not necessarily prevent the introduction of a new service that would otherwise benefit residents of one or the other market (see Broadcasting Information Bulletin 2010-341). In this case, the Commission finds that the additional FM presence that would result from the Corus proposal would

undermine the Common Ownership Policy by adversely affecting competitive balance and diversity in the Calgary market.

32. Further, notwithstanding the determinations made above on the basis of the Common Ownership Policy for radio, the Commission finds that Corus has not provided sufficient justification to warrant the granting of its application on its own merits.
33. In light of all of the above, the Commission **denies** the application by Corus Entertainment Inc., on behalf of its wholly owned subsidiary CKIK-FM Limited, to amend the broadcasting licence for the AM radio programming undertaking CHQR Calgary by adding an FM transmitter in Calgary.

Secretary General

#### **Related documents**

- *Licensing of new radio stations to serve Calgary, Alberta*, Broadcasting Decision CRTC 2012-308, 24 May 2012
- *Call for comments regarding an application by Corus Entertainment Inc., on behalf of CKIK-FM Limited, to amend the broadcasting licence for CHQR Calgary in order to add an FM rebroadcasting transmitter in Calgary*, Broadcasting Notice of Consultation CRTC 2011-695, 9 November 2011
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2011-694, 9 November 2011
- *Revised guidelines for the application of the Common Ownership Policy for Radio*, Broadcasting Information Bulletin CRTC 2010-341, 4 June 2010
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *CJOB Winnipeg – New FM transmitter in Winnipeg*, Broadcasting Decision CRTC 2007-350, 7 September 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998