



## Broadcasting Decision CRTC 2013-334

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Route reference: Part 1 application posted on 15 August 2012

Ottawa, 12 July 2013

### **Newcap Inc.**

Kelowna, British Columbia

*Application 2012-0963-5*

### **CKKO-FM Kelowna – Technical changes**

*The Commission **denies** the application by Newcap Inc. to change the authorized contours of its English-language commercial radio station CKKO-FM Kelowna.*

#### **The application**

1. Newcap Inc. (Newcap) filed an application to change the authorized contours of the English-language commercial radio station CKKO-FM Kelowna by relocating its transmitter to a site on top of Okanagan Mountain and by changing its transmitter class from B to C and its average effective radiated power (ERP) from 10,000 to 6,300 watts (directional antenna with a decrease in maximum ERP from 31,000 to 14,100 watts and an increase in the effective height of the antenna above average terrain from 130.8 to 793 metres).<sup>1</sup>
2. Newcap stated that the change in the location of the transmitter would provide residents of nearby Penticton with access to CKKO-FM's classic rock format, which would be new and different from what was currently available to them. Moreover, it stated that these changes would also provide Newcap with access to both the Kelowna and Penticton markets, which would put it in a more equitable competitive position in relation to its competitors in the Okanagan Valley, namely Jim Pattison Broadcast Group Limited Partnership (Pattison), with two FM stations in Kelowna,<sup>2</sup> and Astral Media Radio G.P. (Astral), with two FM stations and one AM station in both Kelowna and Penticton.<sup>3</sup>

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<sup>1</sup> These technical parameters reflect those approved by the Department of Industry.

<sup>2</sup> The Pattison stations are licensed to Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner), carrying on business as Jim Pattison Broadcast Group Limited Partnership.

<sup>3</sup> The Astral stations are licensed to Astral Media Radio (Toronto) Inc. and 4382072 Canada Inc., partners in a general partnership carrying on business as Astral Media Radio G.P.

## **Interventions and applicant's reply**

3. The Commission received an intervention opposing the application from Pattison, the licensee of CKLZ-FM and CKQQ-FM Kelowna. The public record for this application can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
4. Pattison noted that the profit before interest and taxes margins of the radio stations in the Kelowna market and surrounding markets were low. Pattison stated that approval of Newcap's application would be contrary to the public interest and the integrity of the licensing process in that it would allow Newcap to enter multiple markets with one station. In this respect, Pattison noted that Newcap had recently rebranded its Penticton station CIGV-FM as a "Superstation" targeting both Penticton and Kelowna and argued that this demonstrated Newcap's intention to grow its market and revenue share beyond its licensed markets.
5. In reply, Newcap noted that Kelowna had experienced significant economic growth since 1999, while retail sales per capita in Penticton were 57% above the national average and 61% above the provincial average. With respect to the claim made by Pattison that Newcap had changed CIGV-FM Penticton's orientation, Newcap stated that CIGV-FM had been available to all of the Okanagan Valley since 1981 and was registered in the BBM Canada book for Kelowna before it was acquired by Newcap. The applicant further submitted that, contrary to Pattison's claims, approval of its application would not affect Pattison's Kelowna or Vernon stations and that only Penticton would be receiving additional service. Newcap also noted that Astral, the only other broadcaster licensed to serve Penticton, and Vista Radio Ltd. (Vista), the only single-station commercial broadcaster in the area, had not intervened in response to its application. Finally, Newcap stated that both CKKO-FM and CIGV-FM were currently available in the Kelowna market and that approval of its application would maximize the use of the 96.3 MHz frequency and would add a classic rock format that was not currently available in Penticton.

## **Commission's analysis and decision**

6. When a licensee files an application to change its authorized contours, the Commission expects the licensee to present compelling economic or technical evidence that its existing technical parameters are not adequate to provide the service as originally proposed.
7. In the present case, the Commission notes that the applicant has not proposed to change the technical parameters of its station with the objective of serving the area it is licensed to serve. Rather, the applicant is requesting approval to expand the licensed area of its station to include Penticton. In this regard, the Commission notes that the proposed technical amendment would give CKKO-FM access to a significant portion of the Penticton market. Given the significant number of potential Penticton listeners that would be included in the station's primary contour, the Commission is of the view that the applicant would likely have a strong incentive to redirect part of

its programming from Kelowna, the market it is licensed to serve, to its new Penticton audience, possibly through a regionalization of CKKO-FM's programming orientation. Further, the Commission considers that the applicant would be in a position to draw advertising revenue from the Penticton market. The Commission is therefore of the view that approval of the requested technical changes would be akin to granting to Newcap a new service for Penticton without the competitive process that would normally apply.

8. With respect to economic need, the Commission notes that the challenges faced by CKKO-FM in Kelowna in competing with Astral and Pattison are no different than those faced by Vista's newly launched CJUI-FM in the same market. The Commission also notes that Newcap submitted that it did not consider that the proposed technical amendments were necessary for CKKO-FM's financial viability and that it did not project any changes to the station's financials as a result of the approval of its application.
9. In light of all of the above, the Commission **denies** the application by Newcap Inc. to change the authorized contours of the English-language commercial radio programming undertaking CKKO-FM Kelowna.

Secretary General