



Broadcasting Decision CRTC 2014-378

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Route reference: 2013-663

Additional references: 2012-126 and 2012-126-3

Ottawa, 18 July 2014

My Broadcasting Corporation

Orangeville, Ontario

Application 2011-1173-1, received 10 August 2011

Public hearing in the National Capital Region

26 February 2014

English-language FM radio station in Orangeville

*The Commission **approves** an application for a broadcasting licence to operate an English-language commercial FM radio station in Orangeville. The new station will provide Orangeville and its residents with a dedicated local radio service that will fulfill specific requirements relating to local Orangeville programming, including the broadcast of announcements that are reflective of its standing as a community distinct and separate from Toronto.*

Application

1. My Broadcasting Corporation (MBC) filed an application for a broadcasting licence to operate an English-language commercial FM radio station in Orangeville, Ontario. The Commission notes that it originally published MBC's application in Broadcasting Notice of Consultation 2012-126 and announced that it would be considered at a public hearing commencing 7 May 2012. In light of comments received, the Commission withdrew the application from that public hearing and announced, in Broadcasting Notice of Consultation 2012-126-3, that it would be rescheduled at a later date. In Broadcasting Notice of Consultation 2013-663, the Commission announced that the application would be considered at a public hearing on 26 February 2014.
2. MBC is jointly controlled by John Pole and Andrew Dickson.
3. The proposed station would operate at 101.5 MHz (channel 268A) with an average effective radiated power (ERP) of 338 watts (maximum ERP of 625 watts with an effective height of antenna above average terrain of 55.1 metres).
4. The station would offer an adult-contemporary/gold music format, and would provide a unique blend of music, local flavour and local news. Although the station would specifically target adults 18 to 64 years of age, it would provide service to all

residents of Orangeville and the surrounding area, with a focus on local content specifically for that community.

5. The applicant proposed to broadcast 100 hours of local programming per broadcast week. This would include 14 hours of spoken word programming, of which five hours would be news.
6. MBC stated that its proposed station would provide Orangeville with its only local radio service. In this regard, it argued that CIDC-FM Orangeville, which is owned and operated by Dufferin Communications Inc. (Dufferin) and has been licensed to serve Orangeville for some time, “has migrated both its studio and transmitter out of the community in order to serve the more lucrative Toronto market.” As part of its application, MBC provided letters of support from business owners and consumers, as well as from the Mayor of Orangeville and the local Member of Provincial Parliament, who stated that Orangeville does not currently have a radio station dedicated to providing local news and information.
7. To support the proposed station’s local focus, MBC committed to make regular announcements throughout the broadcast day identifying the station as a local service in Orangeville, and refrain from broadcasting station identification announcements containing exclusive references to the City of Toronto. It also committed to include references to Orangeville and Dufferin County in each traffic and weather report. MBC stated that it would adhere to these commitments by condition of licence.
8. MBC also committed to devote, by condition of licence, 38% of its content category 2 (Popular Music) musical selections broadcast during each broadcast week and between 6 a.m. and 6.p.m. from Monday to Friday to Canadian selections, which exceeds the minimum regulatory requirement set out in the *Radio Regulations, 1986* (the Regulations).
9. In addition, MBC committed to exceed the minimum required contribution to Canadian content development (CCD) set out in section 15 of the Regulations. Specifically, it committed to devote, by condition of licence, over and above the basic annual contribution to CCD, a total of \$3,000 to CCD over six consecutive broadcast years (\$500 per broadcast year), beginning the second year of the station’s operation. It noted that a portion of its contribution would be directed to a local Orangeville music event that provides an opportunity to showcase local artists.

Interventions

10. In Broadcasting Notice of Consultation 2013-663, the Commission indicated that it would consider the interventions and the related reply regarding MBC’s application that were accepted and placed on the public file for the aforementioned 7 May 2012 public hearing, as well as the interventions received for this application in the context of the present hearing. The public record for this application can be found on the Commission’s website at www.crtc.gc.ca or by using the application number provided above.

11. The Commission received several interventions in support of the application. It also received interventions opposing the application from Bayshore Broadcasting Corporation (Bayshore), Durham Radio Inc. (Durham), Mr. Frank Rogers, owner of 2188301 Ontario Corporation, the licensee of CFAO Alliston, Dufferin (of which Evanov Radio Group is the parent and controlling entity), and an individual. Finally, the Commission received comments from the Ministry of Community Safety and Correctional Services, Province of Ontario, the Diversity Emerging Music Collective, and an individual. MBC replied to each of the opposing interventions.
12. The intervention from the Province of Ontario related to the participation of the proposed station in its jurisdiction in the National Public Alerting System (NPAS). In this regard, in Broadcasting Notice of Consultation 2014-85, the Commission proposed regulations that would require the participation of broadcasters in the NPAS by 31 December 2014. Therefore, it will not impose conditions of licence requiring the participation of broadcasters in the NPAS at this time. However, the Commission continues to expect all licensees to voluntarily participate in the NPAS so that Canadians receive timely warnings of imminent perils.

Commission's analysis and decisions

13. After examining the application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
 - whether it should have issued a call for applications for a broadcasting licence to operate a radio station in Orangeville;
 - the potential negative impact of the proposed station on other radio stations in the region;
 - whether the proposal represents an appropriate use of spectrum; and
 - programming diversity and local reflection.

Call for applications

14. Certain interveners submitted that the Commission should have issued a call for applications for radio stations to serve Orangeville. Dufferin, for example, argued that approval of MBC's application would violate established Commission policy regarding the availability of frequencies in a market. Durham expressed the concern that MBC's application was being considered as a "first service" application when there was already a radio station licensed to serve Orangeville (i.e., CIDC-FM). It noted its intention to respond to a call for applications should one be announced.
15. In reply, MBC submitted that CIDC-FM had repositioned itself as "Toronto's heritage CHR (contemporary hit radio) station." It also argued that since frequencies other than 101.5 MHz are available in the Orangeville market, a call for applications would not be appropriate. Finally, it cited cases where applicants had proposed to operate radio stations that were designed to serve smaller communities embedded

within larger census metropolitan areas (CMAs), and were granted radio broadcasting licences in the absence of a call.¹ In this regard, MBC compared Orangeville to St. Thomas, Ontario, noting that the latter used to have its own local radio station, which was later moved to London, Ontario. It stated that when it subsequently applied for a broadcasting licence to operate a radio station to serve St. Thomas, it was awarded the licence without a competing call for applications. MBC submitted that the present application should be treated in a similar manner.

16. The Commission notes that MBC, in its original application, proposed the use of frequency 101.5 MHz, noting that it was the last available frequency for Orangeville due to spectrum scarcity.² However, on 20 September 2013, MBC identified a second frequency, 89.1 MHz (channel 206B), that could provide service to Orangeville. After examining spectrum availability, the Commission concurs that the frequency 101.5 MHz is not the last available frequency to serve Orangeville.
17. Moreover, CIDC-FM's financial performance reflects a profile of a station that is competing in the Toronto radio market, and that the station draws little local revenue from Orangeville. In addition, after examining a portion of CIDC-FM's programming in January 2013, the Commission is of the view that the station has oriented itself as a Toronto radio station, rather than an Orangeville radio station.
18. Consequently, the Commission is satisfied that a call for applications is not necessary in the present circumstances.

Impact on other radio stations in the region

19. The Commission notes the concerns raised by Bayshore in regard to its future radio station in Shelburne, Ontario, and by Dufferin in regard to CIDC-FM, and has considered the potential negative impact of the proposed station on those stations.

Bayshore's future radio station in Shelburne

20. Bayshore was granted a broadcasting licence in Broadcasting Decision 2012-123 to operate a radio station in Shelburne. It noted that the broadcast contours of MBC's proposed station fall largely within the coverage area of the Shelburne station. According to Bayshore, the small amount of advertising revenue that it would generate from Orangeville, given the limited availability of its future station's signal in that city (which it estimated to be between 10 and 15% of the station's revenues), would be lost to any new station operating there. It further expressed concern over the potential for over-licensing in radio markets and the negative impact that this might have on the quality of service to local communities.

¹ Strathroy, Ontario (part of the London CMA), Port Moody, British Columbia (part of the Vancouver CMA) and Uxbridge, Ontario (part of the Toronto CMA)

² According to the Department of Industry's frequency allotment plan, there was no remaining frequency available for assignment in Orangeville.

21. Noting that the primary contour (i.e., 3mV/m) of a station defines its radio market, MBC replied that the primary contours of its proposed station and of the future Shelburne station do not overlap. It argued that even under a worst-case scenario, the impact on Bayshore's future station would only amount to about \$15,000. In this regard, it stated that "competition encourages improved radio services and a wider diversity of choice for the consumer and listener base."
22. The Commission notes that Orangeville and Shelburne represent two distinct and separate radio markets. Since the primary contours of the two stations would not overlap, any impact that MBC's proposed station would have on Bayshore's future station would take place outside of the latter's principal market of Shelburne. In regard to the secondary contours, there would only be a limited population overlap resulting from Bayshore's station reaching Orangeville. As such, any revenue loss would be from revenue derived from coverage areas that Bayshore would not be licensed to serve with its future station. Consequently, the Commission finds that MBC's proposed radio station would not have a significant negative financial impact on Bayshore's future Shelburne station.

CIDC-FM Orangeville

23. Dufferin submitted that approval of MBC's application "would cause significant harm to the quality of the service that CIDC-FM is able to provide to this small community." It further submitted that the combination of MBC's Orangeville and Alliston, Ontario³ proposals would, if approved, "create a superstation that would be spread over a large geographical area."
24. Dufferin disagreed with MBC's allegations that CIDC-FM had essentially abandoned the Orangeville market by re-orienting its programming towards the Greater Toronto Area. It argued that the inclusion of Orangeville as part of the Toronto CMA (as defined by Statistics Canada), a geographical definition used, notably, by the Broadcast Bureau of Measurement (BBM) and the Financial Post's Canadian Demographics, has forced CIDC-FM to compete with all other Toronto radio market stations to remain profitable and continue to provide local programming to Orangeville residents.
25. In reply, MBC reiterated that CIDC-FM has moved away from serving Orangeville, and that it is repositioning itself as "Toronto's heritage CHR station." In regard to the claim that CIDC-FM needs to compete with other Toronto stations, MBC suggested that the station's advertising rates were more in line with rates charged by stations competing within the Toronto radio market, and were too expensive for smaller Orangeville businesses to pay.
26. As indicated above, the Commission is of the view that CIDC-FM's financial performance and programming suggest that the station targets the Toronto radio

³ MBC's application for a broadcasting licence to operate a radio station in Alliston was approved in Broadcasting Decision 2012-491, and launched as CIMA-FM Alliston in 2014.

market rather than the Orangeville radio market. Consequently, the Commission finds that MBC's proposed radio station would not have a significant negative financial impact on CIDC-FM.

Appropriate use of spectrum

27. As noted above, the primary contours of MBC's proposed station and Bayshore's future Shelburne station would not overlap. In addition, the 0.5 mV/m interference-free service zone mainly serves Orangeville without encompassing adjacent markets.
28. Further, as noted above, there are other frequencies available for use that would provide limited coverage to Orangeville and its immediate surrounding area. Nevertheless, the Commission considers that the frequency 101.5 MHz is the best option available to MBC, and that MBC proposes to use the frequency to its maximum potential.
29. Finally, the use of 101.5 MHz in Orangeville will not affect the availability of frequencies in major adjacent markets, such as Toronto, because of the interference protection criteria towards existing adjacent stations (i.e., it is not available in Toronto). Accordingly, the Commission finds that the use of the frequency proposed by MBC would not have a significant impact on the availability of frequencies in adjacent markets.
30. In light of all of the above, the Commission finds that MBC's proposal for the use of the frequency 101.5 MHz for its proposed station in Orangeville represents an appropriate use of spectrum.

Programming diversity and local reflection

31. In the Commission's view, the proposed station would provide programming diversity to the Orangeville radio market by offering another choice of music for listeners. It further notes MBC's commitment to local reflection, based on its proposal regarding the broadcast of local programming and its commitments to identify the station as a local Orangeville service, to refrain from making station identification announcements that contain exclusive references to the City of Toronto, and to include both Orangeville and Dufferin County in traffic and weather reports.
32. Given the limited range that the station's signal will have due to the proposed technical parameters, the fact that it will be the only station directly serving the Orangeville community, and the standard condition of licence, set out in Broadcasting Regulatory Policy 2009-62, requiring radio stations to broadcast a minimum of 42 hours of local programming per broadcast week, the Commission does not consider it necessary to impose a condition of licence requiring MBC to provide the proposed 100 hours of local programming per broadcast week.

Conclusion

33. In light of all of the above, the Commission **approves** the application by My Broadcasting Corporation for a broadcasting licence to operate an English-language, commercial FM radio programming undertaking in Orangeville, Ontario. The new station will provide Orangeville and its residents with a dedicated local radio service that will fulfill specific requirements relating to local Orangeville programming, including the broadcast of announcements that are reflective of its standing as a community distinct and separate from Toronto. The terms and **conditions of licence** are set out in the appendix to this decision.

Canadian content development

34. The Commission reminds the licensee that it must adhere to the requirements relating to contributions to CCD set out in section 15 of the Regulations, as amended from time to time. The Commission notes that according to MBC's financial projections, the station would generate annual revenues below the \$1.25 million threshold set out in the Regulations throughout its licence term and therefore may not be required to make any basic CCD contributions so long as annual revenues remain below \$1.25 million.

35. The Commission further notes that MBC made commitments to exceed the minimum contribution to CCD. Specifically, MBC committed to devote, by condition of licence, over and above the basic annual contribution to CCD, a total of \$3,000 to CCD over six consecutive broadcast years (\$500 per broadcast year), beginning the second year of operation. Of this amount, at least 20% per broadcast year will be devoted to FACTOR or MUSICACTION. The remainder shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of Broadcasting Public Notice 2006-158. A **condition of licence** to that effect is set out in the appendix to this decision.

Secretary General

Related documents

- *Call for comments on proposed amendments to various regulations, to the standard conditions of licence for video-on-demand undertakings, and to certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Notice of Consultation CRTC 2014-85, 27 February 2014
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2013-663, 9 December 2013
- *English-language FM radio station in Alliston*, Broadcasting Decision CRTC 2012-491, 12 September 2012

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2012-126, 2 March 2012, as amended by Broadcasting Notice of Consultation CRTC 2012-126-3, 26 April 2012
- *Licensing of new radio stations to serve Shelburne and Collingwood, Ontario*, Broadcasting Decision CRTC 2012-123, 29 February 2012
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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

Appendix to Broadcasting Decision CRTC 2014-378

Terms, conditions of licence and encouragement for the English-language commercial FM radio programming undertaking in Orangeville, Ontario

Terms

The licence will expire 31 August 2020.

The station will operate at 101.5 MHz (channel 268A) with an average effective radiated power (ERP) of 338 watts (maximum ERP of 625 watts with an effective height of antenna above average terrain of 55.1 metres).

The Commission reminds the applicant that, pursuant to section 22(1) of the *Broadcasting Act*, no licence may be issued until the Department of Industry notifies the Commission that its technical requirements have been met and that a broadcasting certificate will be issued.

Furthermore, the Commission will only issue a licence for this undertaking once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before **18 July 2016**. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this date.

Conditions of licence

1. The licensee shall adhere to the conditions set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, as amended from time to time.
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations), in any broadcast week:
 - a) devote, in that broadcast week, a minimum of 38% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety; and
 - b) devote, between 6:00 a.m. and 6:00 p.m., in the period from Monday to Friday of the same broadcast week, a minimum of 38% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

For the purposes of this condition, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meaning as that set out in the Regulations.

3. In addition to the basic annual contribution to Canadian content development, set out in section 15 of the *Radio Regulations, 1986*, the licensee shall, commencing in Year 2 of its operation, make an annual contribution of \$500 (\$3,000 over six consecutive broadcast years) to the promotion and development of Canadian content.

Of this amount, not less than 20% per broadcast year shall be devoted to FACTOR or MUSICACTION. The remainder shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

4. The licensee shall identify the radio station as an Orangeville, Ontario radio station, through the broadcast of announcements to that effect throughout the broadcast day, and shall refrain from broadcasting station identification announcements that contain exclusive references to the City of Toronto.
5. In each traffic report and weather report broadcast by the station, the licensee shall include references to Orangeville and Dufferin County, Ontario.

Encouragement

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.