



Broadcasting Decision CRTC 2016-399

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References: 2016-20, 2016-20-2 and 2016-176

Ottawa, 7 October 2016

Bayshore Broadcasting Corporation
Gravenhurst and Bracebridge, Ontario

Application 2014-0147-1, received 17 February 2014
Public hearing in the National Capital Region
13 July 2016

English-language commercial FM radio station in Gravenhurst and Bracebridge

*The Commission **approves** an application for a broadcasting licence to operate an English-language commercial FM radio station in Gravenhurst and Bracebridge, Ontario.*

Application

1. Bayshore Broadcasting Corporation (Bayshore) filed an application for a broadcasting licence to operate an English-language commercial FM radio station in Gravenhurst and Bracebridge, Ontario.
2. Bayshore is a wholly owned subsidiary of 641718 Ontario Limited, a corporation controlled by C. Douglas Caldwell.
3. The station would operate at 102.3 MHz (channel 272B1) with an effective radiated power of 22,000 watts (non-directional antenna with an effective height above average terrain of 69.5 metres).
4. The station would offer a country music format, including emerging Canadian talent, targeting listeners between the ages of 25 and 64 in Gravenhurst and Bracebridge and surrounding areas, with a core audience of females aged 35 to 54. The station would broadcast 126 hours of local, station-produced programming during each broadcast week, including 8 hours and 37 minutes of local news. It would also broadcast public affairs programming, editorial comments on community issues, entertainment news and health- and community-related information, for a total of 16 hours of spoken word programming per broadcast week.

5. Bayshore committed to devote, by condition of licence, at least 40% of the station's popular music selections during the broadcast week and between 6 a.m. and 6 p.m. from Monday to Friday to Canadian selections.
6. Finally, in addition to the required basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986*, the applicant committed to contribute, by condition of licence, \$70,000 to CCD over its first seven consecutive years of operation. Of this amount, at least 20% would be devoted to FACTOR. The remainder would be directed to FACTOR, to Peter's Players of Gravenhurst to showcase Canadian talent, to regional school boards for music instrument purchases and to local and regional artists to record, perform and promote themselves in the province.

Background

7. In Broadcasting Decision 2015-490, the Commission set out its determinations on market capacity and the appropriateness of issuing a call for radio applications to serve Bracebridge and Gravenhurst. It found that the Bracebridge and Gravenhurst market could sustain an additional station.
8. During the proceeding leading up to that decision,¹ only Bayshore expressed interest in serving the market. Therefore, consistent with Broadcasting Regulatory Policy 2014-554, the Commission also found that it was not necessary to issue a call for applications.
9. The application by Bayshore was initially scheduled to be heard at a non-appearing hearing held on 22 March 2016, but the Commission decided to withdraw the application and reschedule it at a later date in light of interventions received and another application to serve the market.²
10. On 11 and 24 March 2016, Bayshore filed procedural letters with the Commission. Bayshore noted that its application had been removed from the 22 March 2016 hearing and that it had been with the Commission for over two years. The applicant stated that it did not understand the reasons for the delay and submitted that the interventions concerned the Commission's process and not its application and that the debate over that process should be held in a different forum. Bayshore also submitted that it had clearly refuted the claims made by the interveners and that it was unfair to further delay its application to sort out the Commission's policy directives. It requested that its application be judged on its own merits in a reasonable timeframe.

¹ See Broadcasting Notice of Consultation 2015-63.

² See Broadcasting Notice of Consultation 2016-20, as amended by Broadcasting Notice of Consultation 2016-20-2.

11. Following further consideration, the Commission decided to proceed with Bayshore's application on its merits, and the application was scheduled as a non-appearing item at the 13 July 2016 public hearing.³

Interventions

12. The Commission received several interventions supporting the application, as well as a comment by Muskoka Information Services Incorporated (MIS) and opposing interventions by Dufferin Communications Inc. (Dufferin), Larche Communications Inc. (Larche) and Vista Radio Ltd. (Vista). The public record for this application, which includes interventions filed in response to Broadcasting Notice of Consultation 2016-20, can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.
13. MIS indicated that the frequency proposed by Bayshore was currently being used by its low-power tourist information station CIIG-FM Gravenhurst. MIS noted that Bayshore had offered to assist it in transitioning to a new frequency if the application was approved. As such, MIS did not object to Bayshore's application.
14. Both Dufferin and Larche submitted that the revised call policy set out in Broadcasting Regulatory Policy 2014-554 was unclear and that they were unaware that they would not have further opportunities to file an application to serve the Bracebridge/Gravenhurst market.
15. More specifically, Dufferin objected to the Commission's decision to proceed with Bayshore's application alone and attached its own application for a new service in the market for the public record. Dufferin argued that it had applied for a new service for the market twice in the past, both of which applications were denied, and that therefore the Commission should have been aware of its continued interest to serve the market. Dufferin asked that the Commission issue a call for applications for the market or consider its own application as well as the Bayshore application.
16. In its second intervention filed as part of the current proceeding, Dufferin stressed that it opposed Bayshore's application, not based on its merits but rather on the procedure adopted by the Commission. Dufferin stated that the Commission's decision to proceed with Bayshore's application without issuing a call for applications did not appear to be consistent with Commission policy. It added that considering Bayshore's application without issuing a call for applications or considering its own application would be a deviation from process and would result in long-term harm to it and other broadcasters interested in serving the market. Dufferin requested that the Commission withdraw the application by Bayshore once again and issue a call for applications for the market or publish its own application to be considered at the 13 July 2016 hearing.

³ See Broadcasting Notice of Consultation 2016-176.

17. Similarly, Larche opposed the process and the new call policy and indicated that it would be interested in applying to serve the market in the event of a call. Larche explained that it was under the impression that the Commission was seeking comments from the market itself and any existing stations when it issued Broadcasting Notice of Consultation 2015-63 announcing Bayshore's application. Larche submitted that the notice should have made it explicit that the Commission was gauging interest by other parties to serve the market.
18. Vista, which operates the commercial radio station CFBG-FM Bracebridge, requested that the Commission impose conditions of licence relating to key programming elements on Bayshore should its application be approved. If Bayshore rejected the conditions of licence, Vista asked that the application be denied. Vista noted that the Commission had imposed conditions of licence relating to format in the past and submitted that failure to impose the following conditions of licence would result in undue impact on its station:
- a minimum of 80% of all musical selections between 6 a.m. and 6 p.m. each day and over the course of the entire broadcast week must be drawn from content subcategory 22 (Country and country-oriented);
 - a minimum of 40% of all musical selections between 6 a.m. and 6 p.m. each day and over the course of the entire broadcast week must be Canadian;
 - a minimum of 6.5% of all musical selections each week must be drawn from content subcategory 32 (Folk and folk-oriented) and content subcategory 35 (Non-classic religious), of which a minimum of 10% must be Canadian; and
 - a minimum of 8 hours of themed programming featuring category 3 musical selections, a minimum of 16 hours of news and enriched spoken word programming, including a minimum of 8.5 hours of news and a minimum of 84 hours of live programming, must be broadcast each week.

Applicant's reply

19. Bayshore argued that Dufferin and Larche had not done their due diligence and should have submitted letters of intent in response to Broadcasting Notice of Consultation 2015-63. In this regard, the applicant highlighted a number of recent instances where interveners clearly understood the policy and expressed interest in serving markets, such as in the case of the calls for comments on market capacity and the appropriateness of issuing calls for applications for Burlington, Edmonton and Grimsby/Beamsville. Bayshore stated that the Commission was clear in its call for comments on market capacity in Gravenhurst and Bracebridge. Bayshore also expressed concern that it would be placed at a competitive disadvantage should the Commission choose to proceed with a call as its application for Gravenhurst and Bracebridge was now public. Finally, Bayshore reiterated that its application was filed more than two years ago and that further delays would be unfair.

20. In response to Vista, Bayshore noted that regulating mainstream formats was virtually unprecedented and that imposing conditions of licence in that regard on its proposed station when Vista was not subject to the same requirements would put the new station at a competitive disadvantage. Bayshore added that if Vista agreed to similar conditions of licence for its station CFBG-FM, it would agree to the proposed requirements. Finally, it stated that it had no intention of changing the station's format from country to adult contemporary (the format of CFBG-FM), noting that it currently operates two country stations.

Commission's analysis and decision

21. In Broadcasting Decision 2015-490, the Commission found that the Bracebridge/Gravenhurst market could sustain an additional station without an undue impact on the Vista station CFBG-FM. Factors supporting this determination included the following:

- a new operator and station would add to the diversity of voices in the market and offer an additional programming format to consumers;
- although lower than the overall provincial average, the average household income in the market is higher than the provincial rural average;
- Gravenhurst and Bracebridge experience a significant influx of seasonal population, which likely has positive effects on the radio market;
- the area's high level of tuning to out-of-market stations presents opportunities to repatriate out-of-market tuning; and
- comparison with centres of similar size suggests that licensing an additional station in the market could stimulate overall advertising by adding a new local advertising channel to the market.

22. In addition to considering the impact on existing stations when evaluating an application for a new commercial radio service, the Commission generally examines the quality of the business plan, including the proposed format, the diversity of voices, plans for local programming and other matters related to the operation of the proposed station.

23. In the Commission's view, the station proposed by Bayshore would provide significant local reflection through its news and information offering, as well as introduce programming diversity in the market.

24. Finally, with respect to Vista's request that the Commission impose specific requirements relating to format on the proposed station, with the exception of FM specialty formats, the Commission generally does not regulate format and allows for programming flexibility. The imposition of these programming levels as conditions of licence would place the new FM service at a competitive disadvantage and would

not give it the same flexibility to adjust its programming offering as that provided to other popular music stations, including CFBG-FM. The Commission therefore does not consider it appropriate to impose these additional conditions of licence (other than the condition of licence relating to Canadian content proposed by the applicant).

25. In light of all of the above, the Commission **approves** the application by Bayshore Broadcasting Corporation for a broadcasting licence to operate an English-language commercial FM radio programming undertaking in Gravenhurst and Bracebridge, Ontario. The terms and **conditions of licence** are set out in the appendix to this decision.

Other commercial radio applications for Gravenhurst and Bracebridge

26. In Broadcasting Regulatory Policy 2014-554, the Commission was clear that it would consider interest in serving a given market as a factor when deciding whether or not to issue a call for radio applications to serve that market. Neither Dufferin nor Larche expressed interest in serving Gravenhurst and Bracebridge in response to Broadcasting Notice of Consultation 2015-63.
27. As stated in Broadcasting Regulatory Policy 2014-554, the Commission will not generally be disposed to accept applications for a commercial station in a specific market for a period of two years following the issuance of a decision approving a new service as a result of a call or where it has decided not to issue a call due to market capacity concerns.
28. In Broadcasting Decision 2015-490, the Commission found that the Gravenhurst and Bracebridge market could sustain an additional station at this time. Given that it has approved the application by Bayshore in this decision, the Commission is returning the application by Dufferin for a new commercial FM radio station to serve the market and will not be disposed to accept new applications for a commercial station in Gravenhurst and Bracebridge for two years from the date of this decision.

Employment equity

29. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Employment and Social Development, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2016-176, 10 May 2016
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2016-20, 20 January 2016, as amended by Broadcasting Notice of Consultation CRTC 2016-20-2, 10 March 2016
- *Findings on market capacity and the appropriateness of issuing a call for radio applications to serve Bracebridge and Gravenhurst, Ontario*, Broadcasting Decision CRTC 2015-490, 4 November 2015
- *Call for comments on market capacity and on the appropriateness of issuing a call for radio applications to serve Bracebridge and Gravenhurst, Ontario*, Broadcasting Notice of Consultation CRTC 2015-63, 24 February 2015
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2016-399

Terms, conditions of licence and expectation for the English-language commercial FM radio programming undertaking in Gravenhurst and Bracebridge, Ontario

Terms

The licence will expire 31 August 2023.

The station will operate at 102.3 MHz (channel 272B1) with an effective radiated power of 22,000 watts (non-directional antenna with an effective height above average terrain of 69.5 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.

Further, 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 **7 October 2018**. 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 well as the conditions set out in the broadcasting licence for the undertaking.
2. 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), the licensee shall devote at least 40% of its musical selections from content category 2 (Popular Music) in any broadcast week and between 6 a.m. and 6 p.m. from Monday to Friday 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 meanings 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, upon commencement of operations, make an annual contribution of \$10,000 (\$70,000 over seven consecutive broadcast years) to the promotion and development of Canadian content.

The licensee shall allocate at least 20% of this amount per broadcast year 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.

Expectation

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.