



## Broadcasting Decision CRTC 2016-99

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Reference: Part 1 application posted on 22 December 2014

Ottawa, 16 March 2016

**105.9 FM Ltd.**  
Scarborough, Ontario

*Application 2014-1332-7*

### **CJVF-FM Scarborough – Licence amendment and technical changes**

*The Commission **denies** an application by 105.9 FM Ltd. to change the technical parameters of the low-power commercial ethnic radio station CJVF-FM Scarborough.*

#### **Application**

1. 105.9 FM Ltd. filed an application to amend the broadcasting licence for the low-power commercial ethnic radio station CJVF-FM Scarborough, Ontario, to change the frequency from 102.7 MHz (channel 274LP) to 105.3 MHz (channel 287LP), relocate the transmission site and change the authorized contours by changing the antenna's radiation pattern from non-directional to directional, increasing the average effective radiated power (ERP) from 6.5 to 26 watts (maximum ERP from 6.5 to 50 watts) and decreasing the effective height of antenna above average terrain (EHAAT) from 63.4 to 60 metres.
2. The application was submitted on the basis of a technical need. In support of its application, the licensee stated that the proposed changes were necessary in light of the Commission's licensing of a station at 102.7 MHz in Scarborough,<sup>1</sup> which is to operate at regular power and is therefore protected.<sup>2</sup> It added that approval of this application would provide CJVF-FM with a slightly different but lesser coverage area than what was originally authorized.

#### **Interventions**

3. The Commission received interventions in support of the application, as well as a comment from an individual. Moreover, it received opposing interventions from a second individual, the Canadian Tamil Broadcasting Corporation, Mr. Frank Torres on behalf of

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<sup>1</sup> In Broadcasting Decision 2014-574, the Commission approved an application by 8041393 Canada Inc., on behalf of a corporation to be incorporated, to operate a commercial ethnic specialty FM radio station.

<sup>2</sup> As a low-power station using a frequency on an unprotected, non-interfering basis vis-à-vis regular power stations, CJVF-FM is required to vacate frequency 102.7 MHz pursuant to the rules and procedures established by the Department of Industry.

the English-language commercial radio station CIUX-FM Uxbridge (CIUX-FM), 8041393 Canada Inc. on behalf of a corporation to be incorporated (East FM), Radio Markham York Inc. (Radio Markham) and Canadian Multicultural Radio (CMR). The licensee replied to the interventions and comment. The public record for this application can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the application number provided above.

4. The first individual, who submitted an intervention in comment, noted the lack of clarity of CJVF-FM's current signal in Scarborough. The opposing interveners requested that the Commission issue a call for competing radio applications and questioned CJVF-FM's compliance with its conditions of licence related to broad service requirements and with its authorized technical parameters.
5. The opposing interveners also argued that approval of the application would have an undue economic and technical impact on incumbent services, including East FM's station, which has yet to launch, and would undermine the financial stability of the existing services that have been licensed to serve ethnic communities in the Greater Toronto Area (GTA).

### **Licensee's reply**

6. 105.9 FM Ltd. replied that the intention of its application was to maintain the status quo and allow CJVF-FM to continue operating on an alternate frequency as a low-power station serving Scarborough.
7. The licensee added that approval of its application would not have an economic impact on the ethnic radio market and would not preclude the future use of 105.3 MHz by a regular-power station or prevent the Commission from considering competitive applications seeking to use that frequency. Rather, it would maximize the use of an available frequency while creating minimal interference. 105.9 FM Ltd. also submitted that CJVF-FM is in compliance with all of its conditions of licence relating to programming.

### **Procedural request and revised application**

8. On 21 August 2015, the licensee filed a procedural request seeking permission to revise the technical parameters originally proposed in its application.<sup>3</sup> These revisions included a new transmission site and minor changes to the station's ERP and EHAAT. 105.9 FM Ltd. stated that the revisions were necessary to address objections to the original parameters raised by CIUX-FM.

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<sup>3</sup> The application was initially filed on 18 December 2014 and published on the Commission's website on 22 December 2014, with the intervention period ending 6 February 2015. The revised technical parameters set out in the applicant's procedural request of 21 August 2015 were placed on the public record for the application.

9. In response to the procedural request, a [procedural letter](#) was issued on 30 September 2015, in which the revised information was accepted on the public file and the intervention period was re-opened for additional comments from all parties in light of the new information.
10. Radio Markham, East FM and CMR each submitted additional interventions in which they restated their opposition to the application. 105.9 FM Ltd. replied that these interventions had little relevance as they did not directly address the revised technical information.

## **Background**

11. The Commission licensed CJVF-FM as a low-power commercial FM ethnic radio station in Scarborough in Broadcasting Decision 2011-756. The station proposed to direct ethnic programming to a minimum of three cultural groups in at least three different languages each broadcast week by condition of licence.
12. In 2012, 105.9 FM Ltd. filed an application for a technical amendment, which included a power increase that would have resulted in CJVF-FM's status changing from low-power unprotected to protected class A. As announced in Broadcasting Notice of Consultation 2014-102, the Commission held a hearing on 13 May 2014 in Toronto to consider this application as well as several competing applications that were mutually exclusive on a technical basis. At that time, CJVF-FM was operating at 102.7 MHz with an ERP of 6.5 watts as a result of Broadcasting Decision 2014-29.
13. Following this public hearing, in Broadcasting Decision 2014-574, the Commission denied 105.9 FM Ltd.'s application. In that decision, it approved an application by East FM to operate a commercial ethnic specialty FM radio station to serve Scarborough at 102.7 MHz at regular power based, in part, on the increased diversity of local ethnic radio programming to be offered and on the fact that it best met the needs of the Scarborough radio market. 105.9 FM Ltd. was therefore required to vacate its frequency.

## **Commission's analysis**

14. When a licensee files an application for a technical amendment, the Commission expects it to demonstrate a compelling technical or economic need justifying the proposed change. Given this expectation, and after examining the information provided on the public record for this application in light of applicable regulations and policies, the Commission considers that it must address the following issues:
  - Are the proposed technical changes necessary for the station to offer the service it was licensed to provide, and has the licensee demonstrated a compelling technical need to justify these changes?
  - Would approval of the application have an undue financial impact on ethnic stations authorized to operate in the Scarborough radio market, thereby undermining the integrity of the Commission's licensing process?

### Technical changes and technical need

15. As noted above, the licensee is required to vacate frequency 102.7 MHz pursuant to Broadcasting Decision 2014-574. The changes proposed in this application would allow 105.9 FM Ltd. to continue operating CJVF-FM as a low-power station at 105.3 MHz, thereby continuing to serve certain ethnic communities in Scarborough.
16. In light of the above, the Commission finds that the proposed changes are necessary for the station to offer the service that it was licensed to provide and that the licensee has demonstrated a compelling technical need to justify these changes.

### Market impact and integrity of the Commission's licensing process

17. It is the Commission's responsibility to regulate and supervise the Canadian broadcasting system with a view to implementing the broadcasting policy objectives established by Parliament. As part of this mandate, the Commission has adopted a competitive-entry licensing framework for radio broadcasting licences. As a complement to this framework, the Commission also analyzes applications by radio licensees for technical amendments to determine, among other things, whether the application would unduly impact other services in the market.
18. In Broadcasting Decision 2014-574, after consideration of competing, mutually exclusive applications—including one from 105.9 FM Ltd.—the Commission licensed East FM to serve the ethnic community of Scarborough at regular power. In that decision, the Commission anticipated that 105.9 FM Ltd. might submit an application to use a frequency other than the one it was being required to vacate.
19. 105.9 FM Ltd.'s current application requests a technical amendment that, if approved, would place its proposed primary and most of its secondary contours within the primary contour of East FM's unlaunched station. As both stations target similar audiences, CJVF-FM would compete directly with East FM's station for listenership and advertising revenues. Consequently, despite CJVF-FM's technical need for the requested amendment, it would not be appropriate to allow CJVF-FM to overlap to a substantial degree with the contours with which East FM's station was recently licensed, especially given that East FM's station has yet to launch.
20. Under these circumstances, approving the application would likely have an undue financial impact on another ethnic station authorized to operate in Scarborough, thereby undermining the integrity of the Commission's licensing process. Moreover, by putting in place conditions that could prevent East FM's station from properly establishing itself in the GTA radio market, approving the application would serve to impede, rather than further, the implementation of the broadcasting policy objectives.

### Conclusion

21. In light of all of the above, the Commission **denies** the application by 105.9 FM Ltd. to amend the broadcasting licence for the low-power commercial ethnic radio programming undertaking CJVF-FM Scarborough to change the frequency from 102.7 MHz

(channel 274LP) to 105.3 MHz (channel 287LP), relocate the transmission site and change the authorized contours by changing the antenna's radiation pattern from non-directional to directional, increasing the average ERP from 6.5 to 26 watts (maximum ERP from 6.5 to 50 watts) and decreasing the EHAAT from 63.4 to 60 metres.

Secretary General

### **Related documents**

- *Licensing of new radio stations to serve Scarborough and technical changes for existing radio stations serving Scarborough, Toronto and Whitchurch-Stouffville*, Broadcasting Decision CRTC 2014-574, 5 November 2014
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2014-102, 6 March 2014
- *CJVF-FM Scarborough – Licence amendment and technical change*, Broadcasting Decision CRTC 2014-29, 30 January 2014
- *Ethnic FM radio station in Scarborough*, Broadcasting Decision CRTC 2011-756, 7 December 2011