



## Broadcasting Decision CRTC 2020-334

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References: 2020-54 and 2020-54-1

Ottawa, 15 September 2020

### Utilities Consumers' Group Society

Whitehorse, Yukon

*Public record for this application: 2019-0961-5*

*Public hearing in the National Capital Region*

*8 June 2020*

### Community FM radio station in Whitehorse

*The Commission **denies** the application by Utilities Consumers' Group Society for a broadcasting licence to operate an English-language community FM radio station in Whitehorse, Yukon.*

#### Background

1. In Broadcasting Decision 2007-415, the Commission approved an application by Utilities Consumers' Group Society (UCGS), a not-for-profit society controlled by its board of directors, for a broadcasting licence to operate the low-power English-language Type B community radio programming undertaking CJUC-FM in Whitehorse, Yukon. This replaced the English-language developmental community FM radio programming undertaking in Whitehorse approved in Broadcasting Decision 2003-59.
2. In Broadcasting Decision 2014-272, the Commission renewed the broadcasting licence for the low-power community FM radio station from 1 September 2014 to 31 August 2021. However, the Commission found UCGS in non-compliance with section 9(2) of the *Radio Regulations, 1986* (the Regulations), which relates to the filing of annual returns, for CJUC-FM for the 2010-2011 broadcast year. The Commission notes that, up to today's date, the licensee is considered in compliance with the submission of its annual returns for the current licence term.

#### Application

3. UCGS filed an application for a broadcasting licence to operate a full power protected English-language community FM radio station in Whitehorse, Yukon. The proposed station would operate at 92.5 MHz (channel 223B) with an average effective radiated power (ERP) of 590 watts (maximum ERP of 1,300 watts with an effective height of the antenna above average terrain of 438.5 metres). The applicant also proposed to move the transmitter from the Yukon Arts Centre to a new location on Haeckel Hill.

4. The applicant proposed to broadcast 126 hours of programming per broadcast week. It specified that 108 hours would be devoted to local programming and 18 hours to wrap-around programming.
5. In a letter dated 24 January 2020, the Commission asked the applicant to provide clarifications on certain parts of its initial application. The applicant replied to all the Commission's questions in a letter dated 30 January 2020.
6. In its initial application, UCGS did not provide any information with regard to volunteer participation at the station. In its response letter dated 30 January 2020, the applicant indicated that CJUC-FM is currently operated entirely by volunteers and provided additional details about its operations.
7. In its letter dated 24 January 2020, the Commission asked the applicant to clarify how the proposed programming would meet the needs and interests of the Whitehorse community. In its response dated 30 January 2020, the applicant mentioned that it is currently broadcasting a variety of syndicated shows that offer modern Canadian Music or World Beat not heard anywhere else in the market. It specified that these shows would be removed once volunteers became available to fill these time periods in the programming schedule.
8. UCGS initially indicated that it did not intend to broadcast any newscasts. It explained that the volunteer nature of the station would make providing regular newscasts difficult and that the Whitehorse community is well served by other radio stations that currently provide such programming. In its response dated 30 January 2020, the applicant reiterated that it does not have the resources to produce news.
9. The applicant initially indicated that 98.7% of the station's musical selections would come from subcategory 21 (Pop, Rock and Dance). The remainder of the music would come from various subcategories of content category 3 (Special Interest Music).<sup>1</sup> In its response dated 30 January 2020, the applicant reduced the percentage of subcategory 21 selections to 73%.
10. UCGS did not initially provide any information regarding local talent development. In its response dated 30 January 2020, UCGS indicated that its current programming schedule includes a minimum of three hours per day of local programming and that local programming constitutes about 15% of the overall schedule.
11. The applicant indicated that it is aware of its responsibility to be able to broadcast local emergency messages. However, it did not provide any details as to the implementation of the National Public Alerting System (NPAS).

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<sup>1</sup> The definitions for the radio content categories and subcategories are set out in Broadcasting Regulatory Policy 2010-819.

## **Interventions**

12. The Commission received multiple interventions in support of this application from licensees operating in the market, as well as from individuals in the community.

## **Regulatory framework**

13. The Commission has the authority, pursuant to section 9(1) of the *Broadcasting Act* (the Act), to issue and renew licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in section 3(1) of the Act.

14. Section 3(1)(b) of the Act states, in part, that the Canadian broadcasting system operates primarily in the English and French languages and includes public, private and community elements.

15. The Commission's policy for community radio is set out in Broadcasting Regulatory Policy 2010-499 (the Policy). The Policy states that a community radio station must:

- permit and facilitate communication among members of the community by fostering diversity in the broadcasting of opinions, spoken word content and musical programming;
- participate in the stimulation of socio-economic endeavors and in the cultural enrichment of communities; and
- reflect the diversity of the communities served and local programming is produced, in part, by volunteers.

16. In Broadcasting Public Notice 2006-158, the Commission defined local programming as follows:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.

## **Commission's analysis and decisions**

17. After examining the public record for this proceeding in light of applicable regulations and policies, the Commission considers that it must address the following issues:

- whether the proposed volunteer structure is viable to ensure compliance with the Policy;

- whether the proposal meets the requirement that 15% of the broadcast week be devoted to locally produced spoken word programming;
- whether the proposal meets the requirement to broadcast a weekly minimum number of hours and minutes of news;
- whether the proposal meets the requirements related to music categories and subcategories;
- whether the proposal meets the local talent development requirements;
- the financial impact on existing stations in the Whitehorse market;
- the impact on the availability of frequencies in Whitehorse and surrounding areas; and
- whether the proposal meets the NPAS requirements.

### **Volunteer participation**

18. In its response letter dated 30 January 2020 to the Commission’s request for more information regarding its application, UCGS stated that CJUC-FM has no employees and is operated entirely by volunteers. The station provides recording equipment and training to any volunteer who wants it for a project. The applicant added that Volunteer Benevoles Yukon is a long-time partner. This non-governmental organization is a resource for the station for volunteer recruitment and retention.
19. The applicant acknowledged that the current operation of the station would need to be adapted if the new licence were granted. UCGS also expressed the hope to transition from purely pre-recorded broadcasting to more conventional live broadcasting from the studio and remotely from the community. To accomplish this, the station would need more volunteers, training and capacity.
20. According to the applicant’s programming proposal, volunteers need to produce enough local programming to fill the applicant’s commitment of 108 hours of local programming per broadcast week. Given the lack of specifics with regard to UCGS’s volunteer structure, the Commission doubts the applicant’s ability to provide 108 hours of local programming per broadcast week.
21. In light of the above, the Commission finds that the proposed volunteer participation plan is not sufficient to ensure the proposed station’s compliance with the Policy.

### **Locally produced spoken word programming**

22. In Broadcasting Regulatory Policy 2010-819, the Commission defined spoken word programming as “all programming with the exception of material falling under subcategory 11 News and categories 2, 3, 4 and 5 (Popular Music, Special Interest Music, Musical Production and Advertising).”

23. The Policy states that community stations must devote a minimum of 15% of their broadcast week to spoken word programming. For the purpose of this requirement, all spoken word programming must be locally produced. Given the applicant's proposal to broadcast 126 hours of programming per broadcast week, a minimum of 19 hours per week should be devoted to locally produced spoken word programming.
24. The Commission noted that the proposed schedule includes only one hour of locally produced spoken word programming (Wednesday at noon). The proposed schedule consists mainly of music blocs and syndicated programs acquired from other sources that, in the Commission's view, should not be considered locally produced spoken word programming. As mentioned above, the Commission is also not confident that the applicant would be able to honour its spoken word programming commitments without a more concrete plan to attract volunteers.
25. In light of the above, the Commission finds that the proposed schedule does not meet the requirement set out in the Policy that the programming broadcast each week consist of not less than 15% of locally produced spoken word programming.

### **Local news programming**

26. The Policy states that applicants "should describe news, public affairs and other programs that have a specific local focus and indicate how much of this programming is produced by volunteers." This ensures that campus and community stations fulfill their role as part of their communities and of the broadcasting system as a whole.
27. In its letter dated 24 January 2020, the Commission asked the applicant why it should be exempt from the requirement to provide local news each broadcast week. In its response dated 30 January 2020, the applicant reiterated that creating news is a constant challenge for an all-volunteer station in a small market. It specified that anyone interested in doing news would be drawn to the stations where they could obtain professional training or compensation. The applicant is considering strategies to obtain funding for a news position to fulfill its responsibility as a community station.
28. The Commission notes that the applicant maintained that it would not offer any news programming. The Commission considers that the applicant has demonstrated an unwillingness to comply with the policy requirement and that it does not understand its importance.
29. In light of the above, the Commission finds that the applicant has not demonstrated the capacity or commitment to comply with this requirement as set out in the Policy.

### **Diversity of programming**

30. The Policy states that "community stations are required, by condition of licence, to devote a minimum of 20% of their musical stations to selections other than those originating from sub-category 21 (Pop, Rock and Dance)." This ensures a diversity of musical selections that is not typically heard on commercial radio stations.

31. The Commission notes that the applicant's initial proposal for the breakdown of music subcategories did not comply with the Policy since more than 80% of the music was from subcategory 21 (Pop, Rock and Dance). The Commission considers that this original proposal demonstrated the applicant's lack of awareness of the music requirements for community stations.
32. In its response dated 30 January 2020, the applicant provided a revised breakdown of music subcategories in which it reduced the percentage of subcategory 21 from 98.7% to 73%. However, the applicant did not submit a revised programming schedule to reflect the change related to the broadcast of music drawn from subcategory 21.
33. The Commission is concerned that the applicant has not demonstrated an appropriate level of knowledge of music categories and subcategories and that it may have difficulty operating its station in a compliant manner.
34. In light of the above, the Commission finds that the revised music breakdown meets the requirements of the Policy.

#### **Development of local talent**

35. As stated in the Policy, the Commission expects community stations to promote the development of Canadian talent, with an emphasis on local musical and spoken word talent, including by providing airplay for the music of new and emerging artists and opportunities for other talent.
36. As described above, the Commission does not consider syndicated programs obtained from other sources to be local programming. Therefore, it is not convinced that the music blocs identified as "local Yukon music" in the proposed programming schedule consist of truly local programming as defined in Broadcasting Public Notice 2006-158. Further, the Commission is not convinced that enough local music could be produced on a weekly basis to fill the proposed 22 hours and would expect a high level of content repetition.
37. In light of the above, the Commission finds that the applicant's proposal does not meet the expectation of the Policy regarding the development of Canadian talent.

#### **Financial impact on existing stations in Whitehorse**

38. Approval of this application would not introduce a new service to the market but rather increase the presence of an existing community radio service. CJUC-FM Whitehorse is one of the incumbent radio stations in the Whitehorse market including CKRW-FM, a commercial station owned by Klondike Broadcasting Company Limited, CHON-FM, an Indigenous (Type B Native) station owned by Northern Native Broadcasting and CIAY-FM, a religious station owned by Bethany Pentecostal Tabernacle. The two latter obtain the majority of their capital from sources other than advertising revenue (e.g., from grants or donations).

39. As a not-for-profit organization, the applicant does not project a significant increase in revenue with the new licence compared with that of the current low-power station. It projected an additional \$6,000 in the first three years following approval. The projected revenue for the proposed station represents a negligible portion of the Whitehorse market's advertising revenue.
40. In light of the above, the Commission finds that this application would not have an undue financial impact on existing stations in the Whitehorse market.

### **Impact on availability of frequencies in Whitehorse**

41. The Commission has identified multiple other channels capable of providing similar or greater coverage than that proposed by the applicant. Therefore, the Commission is of the view that frequency 92.5 MHz would not be the last frequency available to serve Whitehorse and that no other major surrounding markets would be affected.
42. In light of the above, the Commission finds that the use of frequency 92.5 MHz by the applicant in Whitehorse would have minimal impact on the availability of frequencies in Whitehorse and surrounding areas.

### **Implementation of the NPAS**

43. The purpose of the emergency alerting framework set out in Broadcasting Regulatory Policy 2014-444 is to ensure that alerts are available to as many Canadians as possible. In that policy, the Commission stated that the full participation of the broadcasting industry is important for the NPAS to be effective in safeguarding and warning Canadians. The obligations applicable to licensed radio broadcasters are set out in section 16 of the Regulations.
44. Given that the applicant did not provide any details as to the implementation of the NPAS, the Commission has concerns regarding the applicant's ability to comply with section 16 of the Regulations, which states that all licensees of campus, community and Indigenous radio stations must participate in the NPAS.

### **Conclusion**

45. Although approval of this application would not have an undue negative impact on incumbent stations or on the availability of frequencies in Whitehorse and surrounding areas, the applicant has not demonstrated its intention or ability to comply with the requirements of the Policy and the Regulations. Should the applicant wish to submit another application in the future, the onus will be on the applicant to submit a complete application that addresses all the issues described in this decision.
46. In light of all of the above, the Commission **denies** the application by Utilities Consumers' Group Society for a broadcasting licence to operate a full-power protected English-language community FM radio station in Whitehorse, Yukon.

Secretary General

## Related documents

- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014
- *CJUC-FM Whitehorse – Licence renewal*, Broadcasting Decision CRTC 2014-272, 27 May 2014
- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010
- *Community radio station in Whitehorse*, Broadcasting Decision CRTC 2007-415, 6 December 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice 2006-158, 15 December 2006
- *Developmental community radio station in Whitehorse*, Broadcasting Decision 2003-59, 20 February 2003