



Broadcasting Decision CRTC 2005-67

Ottawa, 17 February 2005

Bayshore Broadcasting Corporation
Port Elgin, Ontario

Application 2004-0031-7
Public Hearing in the National Capital Region
7 June 2004

Adult Contemporary FM radio station in Port Elgin

*The Commission **approves** the application by Bayshore Broadcasting Corporation for a broadcasting licence to operate an English-language commercial FM radio station in Port Elgin, Ontario. The station will operate in an Adult Contemporary music format.*

The application

1. The Commission received an application by Bayshore Broadcasting Corporation (Bayshore) for a broadcasting licence to operate an English-language commercial FM radio programming undertaking in Port Elgin at 97.9 MHz (channel 250B1) with an average effective radiated power of 3,800 watts.
2. The applicant proposed an Adult Contemporary format, having a target audience of those between 18 and 54 years of age. Bayshore, a broadcasting company controlled by Mr. Douglas C. Caldwell, currently operates radio stations CKYC-FM and CIXK-FM Owen Sound. Bayshore is also the licensee of CFOS, which has provided service to Owen Sound since 1939, and of its transmitter CFPS Port Elgin. Bayshore indicated that, if its FM application for Port Elgin were approved, it would cease the operation of CFPS.
3. At the 7 June 2004 Public Hearing, the Commission also considered an application by Brian Cooper and Daniel McCarthy, on behalf of a corporation to be incorporated (Cooper/McCarthy), for a broadcasting licence to operate an English-language commercial FM radio station in Kincardine, Ontario, with transmitters in Goderich and Port Elgin. In its application as filed, Cooper/McCarthy proposed to make use of the frequency 97.9 MHz for the transmitter in Port Elgin. This aspect of the Cooper/McCarthy application rendered it and the application by Bayshore for a new Port Elgin FM station operating on 97.9 MHz technically mutually exclusive. In addition, the two applications were competing on economic and marketing grounds in that the more powerful FM station proposed by Bayshore would produce a 3 millivolt per metre contour that would encompass both Kincardine and Port Elgin, which Cooper/McCarthy proposed to serve with two separate transmitters.

Interventions

4. The Commission received more than 50 interventions expressing support for the approval of Bayshore's application.
5. The Commission also received an intervention in opposition to the Bayshore application from Cooper/McCarthy, but notes that this intervention was withdrawn shortly before the hearing by the intervener. Cooper/McCarthy advised the Commission that it had reached an agreement with Bayshore regarding their respective plans for transmitters at Port Elgin, and that Cooper/McCarthy intended to seek the use of a frequency other than 97.9 MHz to serve that community. Cooper/McCarthy indicated that its business plan would be viable even were the Commission to approve both applications.
6. Nevertheless, the Commission determined it appropriate to hear and assess the applications as competing against each other on economic and marketing grounds, given the plans of both applicants to serve Kincardine and Port Elgin.

Bayshore's programming plans

Local programming

7. Bayshore stated that its spoken word programming would substantially reflect the local community, and would include station-produced newscasts and extensive surveillance packages focusing on weather, traffic and water conditions. Each weekday, Bayshore would also broadcast a one-hour, open-line talk show, which would be separate and distinct from a similar program now broadcast in Owen Sound on CFOS. While some synergies would exist with that Owen Sound station in such areas as news gathering, creative and production activities, the proposed Port Elgin FM station would originate 126 hours per week of local, station-produced programming, with an initial level of 84 hours per week of programming broadcast "live-to-air". All local management would be in place at the Port Elgin station by the end of the second year of operation, including those persons responsible for news and other programming.

Canadian content and contributions to Canadian talent development

8. Bayshore stated that a minimum of 35% of all category 2 Popular Music musical selections broadcast during each broadcast week would be Canadian, as required by the *Radio Regulations, 1986*.
9. The applicant also stated that it would participate in the Canadian Talent Development (CTD) Plan created by the Canadian Association of Broadcasters. Bayshore proposed a number of initiatives that, in total, would represent \$47,400 in direct expenditures over a seven-year licence term. This total would be based on minimum annual expenditures of \$6,500 in each of the first three years, \$6,900 in each of years 4 through 6, and \$7,200 in year 7.

10. Bayshore provided the following details concerning the initiatives to be funded through its CTD commitment:
- contributions of \$400 per year to the Foundation to Assist Canadian Talent on Record (FACTOR), and
 - contributions to six local CTD initiatives, namely the Port Elgin Big Band festival, scholarships to attend the Kincardine Summer Music Festival, Pumpkin Fest, Kincardine Scottish Festival, CFBS Chantry Chinook Fishing Festival and the Saugeen First Nations Pow Wow (the six initiatives, together, representing expenditures of \$6,100 in each of years 1, 2 and 3; \$6,500 annually in each of years 4, 5 and 6; and \$6,800 in year 7.)

The Commission's analysis and determination

11. In *Introductory Statement to Decisions CRTC 99-480, 99-481 and 99-482*, 28 October 1999, the Commission indicated that, pursuant to its *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998 (the Commercial Radio Policy), the factors set out below are generally among those relevant to the evaluation of competitive commercial radio applications:
- quality of the application;
 - diversity of news voices in the market;
 - competitive state of the market; and
 - market impact of any proposed station on existing stations.
12. The Commission notes that the third and fourth factors listed above have no bearing on the current applications, as the Port Elgin and Kincardine areas that would be served by both Bayshore and Cooper/McCarthy are not served by any local radio station. As for the other two factors, and as also stated in *Adult Classic Hit FM radio station in Kincardine, with transmitters in Goderich and Port Elgin*, Broadcasting Decision CRTC 2005-68 of today's date (Decision 2005-68), the Commission considers that both Bayshore and Cooper/McCarthy have presented high quality applications with sound business plans and strong commitments to local programming, Canadian content and CTD. Further, the Commission considers that the Adult Contemporary format proposed by Bayshore and the Adult Classic Hit format proposed by Cooper/McCarthy will complement each other, and that the news and information programming of the two proposed stations will far surpass the limited regional services currently available to listeners in the area. Moreover, the Commission is satisfied that the market can support both the new local service to be provided by Bayshore and that to be provided by Cooper/McCarthy, and that both services should be given an opportunity to succeed.
13. Accordingly, the Commission **approves** the application by Bayshore Broadcasting Corporation for a broadcasting licence to operate an English-language commercial FM radio programming undertaking in Port Elgin, Ontario at 97.9 MHz (channel 250B1) with an average effective radiated power of 3,800 watts.

14. In addition, in Decision 2005-68, the Commission has approved in part the application by Cooper/McCarthy. Specifically, the Commission has approved Cooper/McCarthy's application proposing a new FM station at Kincardine, with transmitters at Goderich and Port Elgin. However, it has denied that portion of Cooper/McCarthy's application proposing use of the frequency 97.9 MHz and an ERP of 1,670 watts for the Port Elgin transmitter. In reaching this determination, the Commission has taken into account Cooper/McCarthy's statement that it intends to seek the use of a frequency other than 97.9 MHz for its proposed Port Elgin transmitter. In Decision 2005-68, the Commission has stated that it expects Cooper/McCarthy to submit, within three months of today's date, an amendment to its application proposing the use of an FM frequency for a Port Elgin transmitter that is acceptable to both the Commission and the Department of Industry (the Department).

Issuance of the licence to Bayshore

15. The Commission will issue a licence to Bayshore expiring 31 August 2011. The licence will be subject to the conditions set out in the appendix to this decision.
16. The Department has advised the Commission that, while this application is considered technically acceptable, it will only issue a broadcasting certificate when it has determined that the proposed technical parameters will not create any unacceptable interference with aeronautical NAV/COM services.
17. The Commission reminds the applicant that, pursuant to section 22(1) of the *Broadcasting Act*, no licence may be issued until the Department notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.
18. Furthermore, the licence for this undertaking will only be issued 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 17 February 2007. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

Other matters

Bayshore's commitments to Canadian talent development

19. Notwithstanding the discussion at the hearing, it is not clear to the Commission how Bayshore's proposed contributions to four of the local festivals and events described in the second bullet under paragraph 10 above, namely, the Pumpkin Fest, Kincardine Scottish Festival, CFBS Chantry Chinook Fishing Festival and the Saugeen First Nations Pow Wow, will support Canadian talent, in accordance with the eligibility guidelines set out in *Contributions by radio stations to Canadian talent development – A new*

approach, Public Notice CRTC 1995-196, 17 November 1995. Accordingly, the Commission requires Bayshore to file a report, within six months of the date of this decision, indicating how this funding will be used by recipients to directly support Canadian talent. Should any of this funding fail to qualify as an eligible CTD direct expenditure, Bayshore would be required to redirect the disqualified amounts to initiatives that meet the eligibility criteria.

20. The Commission notes that a **condition of licence** is set out in the appendix to this decision requiring the applicant to adhere to its financial commitments to CTD that increase over the licence term. The Commission considers that the minimum amount of the budget allocation is to be made over the seven consecutive broadcast years that follow the commencement of operations. The Commission reiterates that this funding is subject to clarification regarding the eligibility of some of the target initiatives.

Cultural diversity

21. In its Commercial Radio Policy, the Commission encouraged broadcasters to reflect the cultural diversity of Canada in their programming and employment practices, especially with respect to news, music and promotion of Canadian artists. The Commission expects Bayshore to reflect the cultural diversity of Canada in its programming and employment practices.

Employment equity

22. 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.

Status of CFPS Port Elgin

23. The Commission notes that it is Bayshore's intention to cease operation of CFPS Port Elgin once its proposed new FM station in that community goes on air. The Commission therefore expects Bayshore to file an application to amend the licence for CFOS Owen Sound to delete the current Port Elgin AM transmitter effective at the time the proposed FM transmitter enters operation.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format and in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2005-68

Conditions of licence

1. The licence is subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, as well as to the following condition.
2. The licensee shall devote a total of \$47,400 in direct expenditures over the seven consecutive broadcast years that follow commencement of operations, to support the development of Canadian talent, as detailed in this decision and based upon the following annual budgets:

Years 1, 2 and 3	\$6,500 annually
Years 4, 5 and 6	\$6,900 annually
Year 7	\$7,200