



## Broadcasting Decision CRTC 2005-68

Ottawa, 17 February 2005

### **Brian Cooper and Daniel McCarthy, on behalf of a corporation to be incorporated**

Kincardine, Goderich and Port Elgin, Ontario

*Application 2003-0464-2*

*Public Hearing in the National Capital Region*

*7 June 2004*

### **Adult Classic Hit FM radio station in Kincardine, with transmitters in Goderich and Port Elgin**

*The Commission **approves in part** the application by Brian Cooper and Daniel McCarthy, on behalf of a corporation to be incorporated (Cooper/McCarthy), for a broadcasting licence to operate a new English-language commercial FM radio station in Kincardine, with transmitters in Goderich and Port Elgin, Ontario. Specifically, the Commission **approves** that portion of Cooper/McCarthy's application pertaining to the establishment of a new FM station at Kincardine, with a transmitter at Goderich. The station will operate in an Adult Classic Hit music format.*

*In Adult Contemporary FM radio station in Port Elgin, Broadcasting Decision CRTC 2005-67 (Decision 2005-67), also issued today, the Commission has approved an application by Bayshore Broadcasting Corporation (Bayshore) for a broadcasting licence to operate a new English-language commercial FM radio station, also in Port Elgin. The application by Cooper/McCarthy, as originally filed, and that by Bayshore were technically mutually exclusive in that both had proposed the use of the frequency 97.9 MHz (channel 250) at Port Elgin. Shortly before the hearing, however, 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.*

*As announced in Decision 2005-67, the Commission has awarded the frequency 97.9 MHz to Bayshore for use in Port Elgin. Accordingly, although the Commission **approves** Cooper/McCarthy's proposal to establish a transmitter of its Kincardine station at Port Elgin, that portion of the application proposing the use of 97.9 MHz for the Port Elgin transmitter is **denied**. The Commission expects Cooper/McCarthy to submit, within three months of today's date, an amendment to its application proposing the use of an alternative FM frequency for a Port Elgin transmitter that is acceptable to both the Commission and the Department of Industry.*

## **The application**

1. The Commission received 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 programming undertaking in Kincardine, Ontario at 95.5 MHz (channel 238A), with an effective radiated power (ERP) of 5,660 watts. As proposed, the undertaking would include a transmitter in Goderich at 99.7 MHz (channel 259A) with an ERP of 1,670 watts, and another in Port Elgin at 97.9 MHz (channel 250A) with an ERP of 1,620 watts.
2. Cooper/McCarthy proposed an Adult Classic Hits format targeted at an audience of those between the ages of 25 and 54. The applicant would be a new entrant to the broadcasting industry. Mr. Brian Cooper has experience in the professional sports and entertainment industries, including his participation in applications for a number of sports-related Category 2 specialty services. His partner, Mr. Daniel McCarthy, is a chartered accountant.
3. At the 7 June Public Hearing, the Commission also considered 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, the same frequency as that proposed by Cooper/McCarthy for use at that community. The applications, as filed, were thus technically mutually exclusive. They were also 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.
4. Shortly before the hearing, 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.

## **Interventions**

5. The Commission received several interventions expressing support for the approval of Cooper/McCarthy's application.
6. The Commission also received an intervention in opposition to the Cooper/McCarthy application from Bayshore. The intervener's principal concern had been Cooper/McCarthy's plans for use of the same FM frequency in Port Elgin as that Bayshore proposed in its own licence application for a new FM service in that community. Prior to the hearing, Bayshore confirmed the information that the Commission had received from Cooper/McCarthy concerning the agreement reached between the two applicants. Bayshore noted that Cooper/McCarthy's decision to seek the use of an alternative frequency for its proposed Port Elgin transmitter had eliminated its principal concern regarding the Cooper/McCarthy application, and advised the

Commission that it therefore wished to withdraw its opposing intervention. Bayshore added that, in its view, its business plan would be viable even were the Commission to approve both applications.

7. Nevertheless, the Commission determined it appropriate to hear and assess the two applications as competing against each other on economic and marketing grounds, given the plans of both applicants to serve Kincardine and Port Elgin.

## **Cooper/McCarthy's programming plans**

### **Local programming**

8. Cooper/McCarthy stated that its spoken word programming would consist of news, information and other features of interest to people in the areas of Kincardine, Goderich, Port Elgin and other communities along the eastern shore of Lake Huron. All news programming would be produced at the station using reporters located in each of the three communities, and would include live remotes providing updates on a daily basis on breaking news stories, municipal politics, road conditions, entertainment and social events. The applicant emphasized the common bond and mutual areas of interest between the three communities that would be well served by the new station.

### **Canadian content and contributions to Canadian talent development**

9. Cooper/McCarthy 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*.
10. The applicant also indicated that it would participate in the Canadian Talent Development (CTD) Plan created by the Canadian Association of Broadcasters. Cooper/McCarthy proposed a number of initiatives that, in total, would represent \$73,500 in direct expenditures over a seven-year licence term. This total would be based on minimum annual expenditures of \$10,500 for the following:
  - contributions (\$500 annually) to the Foundation to Assist Canadian Talent on Record (FACTOR), and;
  - contributions (\$10,000 annually) to fund live performances at summer music festivals in Kincardine, Goderich and Port Elgin by Canadian artists.
11. The applicant stated that it would showcase local talent at the summer music festivals, as well as nationally-recognized Canadian artists, such as winners of the Canadian Idol talent contests. A proposed community advisory board would assist in the selection of the performers to appear at the festivals.

## The Commission's analysis and determination

12. 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.
13. The Commission notes that the third and fourth factors listed above have no bearing on the current applications, as the Kincardine and Port Elgin areas that would be served by both Cooper/McCarthy and Bayshore are not served by any local radio station. As for the other two factors, and as also stated in *Adult Contemporary FM radio station in Port Elgin*, Broadcasting Decision CRTC 2005-67 of today's date (Decision 2005-67), the Commission considers that both Cooper/McCarthy and Bayshore 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 Classic Hit format proposed by Cooper/McCarthy and the Adult Contemporary format proposed by Bayshore 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 Cooper/McCarthy and that to be provided by Bayshore and that both services should be given an opportunity to succeed.
14. Accordingly, in Decision 2005-67, the Commission has approved the application by Bayshore, including Bayshore's proposed use of the frequency 97.9 MHz at Port Elgin.
15. The Commission also **approves in part** the application by Brian Cooper and Daniel McCarthy, on behalf of a corporation to be incorporated. Specifically, it **approves** the application requesting a broadcasting licence to operate an English-language commercial FM radio programming undertaking in Kincardine, Ontario at 95.5 MHz (channel 238A) with an ERP of 5,660 watts, and for a transmitter of the Kincardine station in Goderich at 99.7 MHz (channel 259A) with an ERP of 1,670 watts. The Commission also **approves** Cooper/McCarthy's proposal to establish a transmitter of the Kincardine station at Port Elgin. However, it **denies** that portion of Cooper/McCarthy's application proposing the use of 97.9 MHz and an ERP of 1,670 watts for the Port Elgin transmitter. The Commission expects Cooper/McCarthy to submit, within three months of today's date, an amendment to its application proposing the use of an alternative 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 Cooper/McCarthy**

16. The Commission will issue a licence to Cooper/McCarthy expiring 31 August 2011. The licence will be subject to the conditions set out in the appendix to this decision.

### **The Kincardine station**

17. The Department has advised the Commission that, while the applicant's proposed technical parameters for its Kincardine station are considered technically acceptable, it will only issue a broadcasting certificate when it has determined that these technical parameters will not create any unacceptable interference with aeronautical NAV/COM services.
18. 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.
19. The licence for this undertaking will only be issued once the applicant has:
  - satisfied the Commission, with supporting documentation, that an eligible Canadian corporation has been incorporated in accordance with the application in all material respects; and
  - informed the Commission in writing that it is prepared to commence operations.
20. The Kincardine station 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.

### **The Goderich transmitter**

21. The Department has advised the Commission that, while the transmitter in Goderich 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.
22. The Commission reminds the applicant that, pursuant to section 22(1) of the *Broadcasting Act*, the authority to operate the transmitter in Goderich will only be effective when the Department notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.

23. The transmitter in Goderich 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.

#### **The Port Elgin transmitter**

24. The authority to operate the transmitter in Port Elgin will only be effective if Cooper/McCarthy submits, within three months of the date of this decision, an amendment to its application proposing the use of an FM frequency that is acceptable to both the Commission and the Department.
25. The Commission reminds the applicant that, pursuant to section 22(1) of the *Broadcasting Act*, the authority to operate the transmitter in Port Elgin will only be effective when the Department notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.
26. The transmitter in Port Elgin 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**

##### **Cooper/McCarthy's commitments to Canadian talent development**

27. The Commission is satisfied that the various CTD initiatives proposed by the applicant meet the eligibility criteria set out in *Contributions by radio stations to Canadian talent development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995. Further, the Commission notes the applicant's commitment to ensure that all direct expenditures relating to the summer music festivals will be made in accordance with the Commission's policy on qualifying contributions to CTD, as set out in Appendix 1 to *An FM policy for the nineties*, Public Notice CRTC 1990-111, 17 December 1990. A **condition of licence** is set out in the appendix to this decision requiring the applicant to adhere to its commitments. The Commission considers that the minimum amount of the budget allocation is to be made over the seven consecutive broadcast years that follow commencement of operations.

##### **Cultural diversity**

28. 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 Cooper/McCarthy to reflect the cultural diversity of Canada in its programming and employment practices.

### **Employment equity**

29. 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.

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, during each broadcast year, \$10,500, for a total of \$73,500 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.