



Broadcasting Decision CRTC 2006-644

Ottawa, 27 November 2006

Maritime Broadcasting System Limited

Windsor, Nova Scotia

Application 2006-0351-5

Public Hearing in Québec, Québec

11 September 2006

CFAB Windsor - Conversion to FM band

*The Commission **approves in part** the application by Maritime Broadcasting System Limited (Maritime) for a broadcasting licence to operate a new, English-language FM radio programming undertaking in Windsor, Nova Scotia to replace its AM station CFAB. Specifically, the Commission **approves** the conversion to the FM band but **denies** the proposed technical parameters. Maritime must submit, within three months of the date of this decision, an amendment to its application proposing new technical parameters that are acceptable to both the Commission and the Department of Industry. Maritime is also required to satisfy the Commission's concerns on its compliance with the Commission's Common Ownership Policy.*

The application

1. The Commission received an application by Maritime Broadcasting System Limited (Maritime) for a broadcasting licence to operate a new, English-language FM radio programming undertaking in Windsor, Nova Scotia to replace its AM station CFAB. The proposed station would operate at 92.9 MHz (channel 225C1) with an average effective radiated power of 47,100 watts¹.
2. Maritime operates CFAB as the only local commercial radio service in Windsor, Nova Scotia, as well as the only commercial stations in nearby Kentville: CKWN-FM and CKEN-FM.
3. Maritime stated that the planned expansion of highway 101 necessitated the dismantling of CFAB's transmitter facilities. While the applicant stated that it had considered continuing the operation of CFAB on the AM band, it had concluded that, from business and service quality perspectives, the operation of CFAB on the FM band would represent a more effective means of ensuring the station's future viability.

¹ The proposed station's average effective radiated power would be 47,100 watts, rather than 47,000 watts, as had been set out in Broadcasting Notice of Public Hearing CRTC 2006-7, 13 July 2006.

4. The new station would continue to offer a country music format. Spoken word programming would include weekday and weekend news broadcasts as well as special community features such as *Resources Today*, *School Info Pak* and *Community Reach*.
5. Maritime proposed to participate in the Canadian talent development (CTD) plan developed by the Canadian Association of Broadcasters (CAB). The minimum contribution under this plan for the Windsor market is \$400 annually. The applicant also stated that the station would promote and showcase Maritime artists.

Interventions

6. The Commission did not receive any interventions in connection with this application.

Commission's analysis and determinations

7. In *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998 (Public Notice 1998-41), the Commission set out its Common Ownership Policy for commercial radio stations, which states "In markets with less than eight commercial stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band. In markets with eight commercial stations or more operating in a given language, a person may be permitted to own or control as many as two AM and two FM stations in that language."
8. Public Notice 1998-41 further states: "In addition to other issues that may be raised in the context of a particular application, persons filing applications under the revised common ownership policy will be required to address the impact on diversity of news voices and the level of competition in the market."
9. Section 2 of the *Radio Regulations, 1986* (the Regulations) defines a "market" as follows:

"Market" means

 - (a) In the case of an A.M. station, the A.M. daytime 15mV/m contour or the central area as defined by the Bureau of Broadcast Measurement (BBM), whichever is smaller, or
 - (b) in the case of an F.M. station, the F.M. 3mV/m contour or the central area as defined by the Bureau of Broadcast Measurement (BBM), whichever is smaller.
10. In considering the merits of the application, the Commission is mindful of Maritime's ownership of both CKWN-FM and CKEN-FM in Kentville.
11. The Commission notes that the new FM station's 3mV/m contour based on its proposed technical parameters would significantly increase CFAB's presence in nearby Kentville and the region beyond its current coverage on the AM band. According to the application, the new FM station would see an increase in the population coverage using the Commission's definition of market from 7,841 to 107,610.

12. Owing to the presence of its nearby two Kentville FM stations and the introduction of the proposed new Windsor FM station with contours that would significantly overlap the 3 mV/m contours of these existing stations, Maritime was asked to justify how the proposed FM station would comply with the Commission's Common Ownership Policy. Specifically, Maritime's ownership of three FM stations would exceed the policy limit which, in the case of markets served by less than eight commercial stations operating in a given language, allows for ownership by one person of a maximum of two stations in any one frequency band.
13. Accordingly, approval of the technical portion of Maritime's application could establish a precedent for which an exemption from the Common Ownership Policy would be required.
14. Maritime submitted that CFAB represents the only commercial radio service in Windsor. The applicant further stated that the Commission's definition of a market set out in the Regulations whereby it considers the signal contours of stations outside of Windsor was flawed. Maritime maintained that Kentville and Windsor should be considered as separate markets.
15. Given the presence of Maritime's stations in Kentville, the Commission examined the application for the new Windsor FM station under its Common Ownership Policy related to impact on diversity of news voices and the level of competition in the market.
16. While the Commission recognizes Maritime's long-standing presence as the sole operator of the local commercial stations in both Kentville and Windsor, this presence has been based on CFAB's limited AM signal coverage, which does not provide a reliable signal to Kentville.
17. Additionally, the Commission notes that Maritime has not addressed the fundamental issues related to impact on diversity of news voices and the level of competition in the market as a result of the introduction of the new Windsor FM under its technical parameters as proposed.
18. Consequently, the Commission does not consider that Maritime has provided compelling reasons to warrant an exemption from the Common Ownership Policy. The Commission recognizes that alternative FM solutions exist for Maritime that could serve to closely replicate the existing CFAB AM signal coverage enabling Maritime at the same time to comply with the Common Ownership Policy.
19. In light of the above, the Commission **approves in part** the application by Maritime Broadcasting System Limited for a broadcasting licence to operate an English-language, commercial FM radio programming undertaking in Windsor, Nova Scotia. However, the applicant's proposed use of the 92.9 MHz (channel 225C1) frequency with an average effective radiated power of 47,100 watts is **denied**.

20. Accordingly, Maritime must file, within 90 days of the date of this decision, a further application proposing alternative technical parameters acceptable to both the Commission and the Department of Industry (the Department). The alternative technical parameters should address the Commission's Common Ownership Policy and demonstrate that the revised technical parameters would not necessitate an exemption from the policy.
21. The licence, when issued, will expire 31 August 2013 and will be subject to the **conditions** set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999.

Issuance of the licence

22. The Commission will only issue the licence, and it will only be effective at such time as:
 - The applicant submits, within 90 days of the date of this decision, an amendment to its application proposing technical parameters that are acceptable to both the Commission and the Department; and
 - 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 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 27 November 2008. 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.
23. 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.

Employment equity

24. Because this applicant is subject to the *Employment Equity Act* and files reports concerning employment equity with Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Secretary General

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