



Broadcasting Decision CRTC 2007-223

Ottawa, 9 July 2007

Blackburn Radio Inc.
Leamington, Ontario

*Application 2006-1534-6, received 24 November 2006
Public Hearing at Membertou, Nova Scotia
16 April 2007*

English-language FM radio station in Leamington

*In this decision, the Commission **approves** an application to operate a new English-language FM radio programming undertaking in Leamington, Ontario. The Commission also **denies** the applicant's request for an exemption from the regulatory requirement regarding the level of hit material that may be broadcast.*

Introduction

1. The Commission received an application by Blackburn Radio Inc. (Blackburn) for a broadcasting licence to operate an English-language FM radio programming undertaking at Leamington.
2. Blackburn currently operates Leamington's only commercial radio station, CHYR-FM.
3. The proposed new station would offer a Country music format targeting listeners aged 25 to 64. The station would provide 9 hours and 30 minutes of news in each broadcast week, of which 50% would be devoted to the coverage of local Leamington and area stories. It would also provide extensive surveillance and spoken word programming, including local traffic reports, weather, interviews, sports and relevant community information. Blackburn committed to ensuring the editorial independence of the new FM station from CHYR-FM through the hiring of a full-time dedicated news director/reporter and two additional full-time employees dedicated to programming.
4. As part of its application, Blackburn also requested that the Commission exempt its new Country FM station from any regulatory requirement with respect to the level of hit material that may be broadcast (i.e. 49.9% in each broadcast week for English-language FM stations). In support of its request, the applicant noted that CHYR-FM currently operates under such an exemption. Blackburn submitted that the current Leamington market still qualifies as a border market due to the substantial number of US signals that are available there and the high level of tuning to US radio stations by Leamington listeners. Blackburn also noted that Leamington still qualifies as a small market.

5. The Commission received interventions in support of and in opposition to this application, as well as a general comment by the Canadian Independent Record Production Association. The opposing interventions were submitted by Leamington's Friends of Country Music Radio (Friends) and by Southshore Broadcasting Inc. (Southshore), the licensee of the low-power community television station CFTV in Leamington. Friends was concerned that the Commission had not issued a call for applications that would have allowed interested local parties to come forward with a proposal, while Southshore expressed concern that a new commercial radio station would negatively impact its community television station's ability to attract local advertising revenue.

Commission's analysis and determinations

6. With respect to the interventions in opposition to the application, the Commission has taken into consideration the views expressed by the interveners and is satisfied with the response provided by Blackburn. In particular, with regard to Friend's concerns relative to the issuance of a call, the Commission notes that, as indicated by Blackburn, the decision not to issue a call for other applications is consistent with its policy on calls, as set out in Broadcasting Public Notice 2006-159. In that notice, the Commission noted that proposals for a new station by the sole commercial operator in a market would not generally result in a call for applications.
7. The Commission also shares the applicant's view that the Leamington market is too small to support the entry of another independent station at this time. However, the Commission considers that recent improvements to CHYR-FM's facilities and infrastructure, coupled with CHYR-FM's established presence in the Leamington market, offers a feasible opportunity for the introduction of a second FM service licensed to Blackburn to serve Leamington's principal marketing area population of 30,203. The Commission also notes that approval of the present application would see the reintroduction of the Country music format in the Leamington market. The Commission is of the view that the presence of a station with a Country music format may help to repatriate local listeners who now tune out of market to the Detroit, Michigan country stations WDTW 106.7 FM and WYCD 99.5 FM.
8. Accordingly, for all the reasons set out above, the Commission **approves** the application by Blackburn Radio Inc. for a broadcasting licence to operate an English-language FM radio programming undertaking at Leamington. The terms and **conditions of licence** of the new undertaking are set out in the appendix to this decision.
9. However, with regard to Blackburn's request that the Commission exempt the new undertaking from any regulatory requirement concerning the level of hit material that may be broadcast, the Commission notes that CHYR-FM's hit exemption was granted in 1993, prior to the release of the Commission's *Revised Policy on the Use of Hits* by

English-Language FM Radio Stations in Public Notice 1997-42. In this notice, the Commission amended the definition of hit material for English-language FM stations operating in markets other than Ottawa/Gatineau and Montreal. The revised definition states, in part:

...for regulatory purposes, a hit is defined as any selection that, up to and including 31 December 1980, reached one of the Top 40 positions in the charts used by the Commission to determine hits. All other selections will be considered as non-hits for the purposes of determining compliance...

10. The Commission notes that English-language FM stations may still broadcast up to a maximum of 49.9% hit material each broadcast week. Coupled with the current definition of hit material, this means that English-language FM stations have a substantial degree of flexibility with respect to programming hit material from both gold and recurrent music libraries.
11. Accordingly, for all of the reasons outlined above, the Commission **denies** Blackburn's request for an exemption from the regulatory requirement regarding the level of hit material that may be broadcast.

Canadian content development

12. In its *Commercial Radio Policy 2006*, as announced in Broadcasting Public Notice 2006-158, the Commission set out a new approach to the development and promotion of Canadian artists. In order to reflect a new emphasis on development initiatives that lead to the creation of audio content for broadcasting Canadian resources, the Commission will replace the expression "Canadian talent development" (CTD) with "Canadian content development" (CCD). Under the new policy, each radio station holding a commercial radio licence is required to make a basic annual CCD contribution based on its revenues in the previous broadcast year. This requirement will be reflected in the *Radio Regulations, 1986* (the Regulations). Until such time, it will be implemented by a transitional condition of licence, as set out in the appendix to this decision. This condition of licence will expire upon the coming into force of the amendments to the Regulations.
13. In the present case, Blackburn indicated that in addition to the required basic annual contribution, it would, by condition of licence, allocate \$4,900 in each of the first seven years of operation to support CCD. In accordance with the new CCD policy, Blackburn would allocate a minimum of 20% or \$980 per year of the \$4,900 over and above contribution to FACTOR. Blackburn indicated that the remaining \$3,920 annual over and above CCD contribution would be allocated to subsidizing performance fees associated with hiring local country artists to perform at area concerts and events. A **condition of licence** reflecting these commitments is set out in the appendix to this decision.

14. The Commission reminds the licensee that any development initiatives that have not been allocated to specific parties by condition of licence should be allocated to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists. Parties and initiatives eligible for CCD funding are identified in paragraph 108 of Broadcasting Public Notice 2006-158.

Employment equity

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

Secretary General

Related documents

- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Revised policy concerning the issuance of calls for radio applications and a new process for applications to serve small markets*, Broadcasting Public Notice CRTC 2006-159, 15 December 2006
- *Revised Policy on the Use of Hits by English-Language FM Radio Stations*, Public Notice CRTC 1997-42, 23 April 1997
- Decision CRTC 93-52, 11 February 1993

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 or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2007-223

Terms and conditions of licence

Terms

Issuance of the broadcasting licence to operate an English-language commercial FM radio programming undertaking in Leamington, Ontario

The licence will expire 31 August 2013.

The station will operate at 92.7 MHz (channel 224B1) with an average effective radiated power of 960 watts.

The Department of Industry (the Department) has advised the Commission that, while this application is conditionally 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.

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.

Furthermore, the licence for this undertaking will 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 9 July 2009. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this date.

Conditions of licence

1. The licence shall be subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, with the exception of condition of licence number 5.
2. The licensee shall, upon commencement of operations, make a basic annual contribution to Canadian content development (CCD). The amount of the contribution shall be determined in accordance with the policy set out in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006, as amended from time to time (Public Notice 2006-158).

The licensee shall allocate 60% of this basic annual CCD contribution to FACTOR or MUSICACTION.

The remainder of the annual basic contribution to CCD shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives in Public Notice 2006-158.

This condition of licence shall expire upon the coming into force of the amendments to the *Radio Regulations, 1986* relating to CCD.

3. In addition to the basic annual contribution, the licensee shall upon commencement of operations contribute \$4,900 annually to the promotion and development of Canadian content. This amount is over and above the licensee's required basic annual CCD contribution. Of this amount, \$980 per year shall be devoted to FACTOR. The remainder, \$3,920 per year, shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives in Public Notice 2006-158.