



Broadcasting Decision CRTC 2005-431

Ottawa, 25 August 2005

Byrnes Communications Inc.
Woodstock, Ontario

Application 2004-0060-7
Public Hearing at Niagara Falls, Ontario
6 June 2005

English-language FM radio station in Woodstock

*In this decision, the Commission **approves** the application by Byrnes Communications Inc. for a broadcasting licence to operate a new English-language FM commercial radio station in Woodstock at 104.7 MHz. The new radio station will offer a mainstream adult contemporary music format.*

Background

1. The application by Byrnes Communications Inc. (Byrnes) was one of six applications considered at the 6 June 2005 public hearing that proposed the use of FM frequency 104.7 MHz. Five of the applicants, including Byrnes, proposed to serve Woodstock, Ontario, while one proposed to serve the nearby community of Tillsonburg, Ontario. The Byrnes application is one of two of these applications approved, either in whole or in part, today by the Commission. In *CKOT Tillsonburg – Conversion to FM Band*, Broadcasting Decision CRTC 2005-432, 25 August 2005 (Decision 2005-432), the Commission has also approved in part the application by Tillsonburg Broadcasting Company Limited (TBCL), to convert CKOT from the AM to the FM band. In *Denial of various applications proposing radio services for Woodstock, Ontario*, Broadcasting Decision CRTC 2005-433, 25 August 2005, the Commission has denied the remaining four competing applications.
2. The Commission's determination that the Woodstock market can support a new commercial FM radio station that concentrates on providing service to the Woodstock market is set out in *Licensing of new radio stations to serve Woodstock and Tillsonburg, Ontario – Introduction to Broadcasting Decisions CRTC 2005-431 to 2005-433*, Broadcasting Public Notice CRTC 2005-85, 25 August 2005 (Public Notice 2005-85). Public Notice 2005-85 also summarizes the rationale underlying the Commission's approval of the Byrnes application and the approval in part of the TBCL application.

The applicant

3. Byrnes is a corporation controlled by Mr. Chris Byrnes, who owns 80% of the company's voting interest. The remaining 20% is held by Mr. Gordon Marratto. Byrnes does not currently own any broadcasting undertakings.

The application

4. Byrnes proposed to establish a new English-language FM commercial radio programming undertaking to serve Woodstock that would operate at 104.7 MHz (channel 284A) with an average effective radiated power (ERP) of 1,910 watts. The new station would offer a mainstream adult contemporary music format designed to appeal to listeners between 25 and 54 years of age. All programming would be station-produced. The applicant proposed to broadcast 11 hours and 18 minutes of spoken word programming per week, including 5 hours and 20 minutes of scheduled newscasts. Seventy percent of the time devoted to newscasts, or 3 hours and 44 minutes per week, would be devoted to news stories related to Woodstock and the surrounding area. The station would also broadcast community-oriented surveillance features. The applicant indicated that a minimum of 40% of all popular (category 2) musical selections aired during each broadcast week would be Canadian.
5. The applicant proposed to devote \$105,000 in direct expenditures to support Canadian talent development (CTD) initiatives over the first seven years of operation. This money would be spent on the following initiatives:
 - \$400 each year to the Foundation to Assist Canadian Talent on Records (FACTOR), to fulfil its commitment as a participant in the Canadian Association of Broadcasters' CTD plan;
 - \$7,000 each year to support the "Woodstock Idol" talent contest;
 - \$1,600 each year to support the "FM104 Young Musician's Award," a contest that will be open to local musicians or bands; and
 - \$6,000 each year for scholarships to support music students.
6. The applicant further indicated that, as part of its commitments to serve the local community, it would foster internships for journalism and broadcasting students from schools such as Fanshawe College and Conestoga College. Byrnes also stated that it would establish an advisory board to offer advice concerning the interaction of the radio station with the community.

Interventions

7. The Commission received over 400 interventions in connection with the application by Byrnes, all but 5 of which were in support.
8. An intervention by Corus Radio Company (Corus), licensee of CKDK-FM Woodstock, opposed all of the applications to use frequency 104.7 MHz to serve Woodstock because it considered that Woodstock could not support an additional commercial radio station. The Commission addresses the intervention by Corus in Public Notice 2005-85.
9. Two of the competing applicants for 104.7 MHz intervened against the Byrnes application. TBCL submitted that the Woodstock market was already served by three stations – CKDK-FM (Corus), CJFH-FM (Sound of Faith Broadcasting) as well as its own station CKOT-FM Tillsonburg, which covers Woodstock with a 3 mV/m signal. TBCL stated that it currently adds to the diversity of news sources in the Woodstock market by providing news coverage and general information. TBCL expressed concern that the music format proposed by Byrnes could overlap with, or duplicate, that provided by CKOT-FM. TBCL argued that the station proposed by Byrnes could have a serious negative financial impact on its advertising revenues from Woodstock, and submitted that the 3 mV/m contour of the station proposed by Byrnes would encroach on the Tillsonburg market.
10. CHUM Limited (CHUM) considered that the use of frequency 104.7 MHz in Woodstock would cause interference with the signal of CHUM-FM Toronto in some areas west of Kitchener. CHUM considered that any applicant for frequency 104.7 MHz other than itself would unlikely be able, or have the inclination, to manage possible interference of its signal with that of CHUM-FM, since the interference would occur outside the protected contours of CHUM-FM. CHUM considered that such interference would lead to a loss of listeners for CHUM-FM.
11. Two individuals opposed the Byrnes application. One considered that frequency 104.7 MHz would be better used by TBCL. The other was not in favour of the music format proposed by Byrnes.
12. The Canadian Independent Record Production Association (CIRPA) submitted a general intervention applicable to the application by Byrnes as well as to the other applicants for new radio stations to serve Woodstock. CIRPA indicated that it was supportive of higher levels of Canadian content, diversity of ownership and independent ownership; diversity of music formats in the marketplace, including diversity in playlists, and CTD. CIRPA considered that funding to FACTOR has a greater value than other CTD initiatives such as local talent contests.

Applicant's replies

13. Byrnes' reply to the intervention by Corus, as well as the reply of other competing applicants for new FM stations to serve Woodstock to the Corus intervention, is discussed in Public Notice 2005-85.

14. In reply to the intervention by TBCL, Byrnes argued that it would provide a truly new voice for Woodstock that would originate from Woodstock, and that the impact of its station on the music formats offered by TBCL's stations would be minimal. Byrnes argued that there are ample resources to support the establishment of its new station without financial impact on existing broadcasters who currently realize revenue from the market. Byrnes also submitted that Tillsonburg lies outside of the 0.5 mV/m contour of its proposed station. It concluded that TBCL should have no concerns about the potential impact on its existing operations should the Byrnes application for an FM radio service for Woodstock be approved.
15. In reply to the intervention by CHUM, Byrnes indicated it had addressed possible interference with CHUM-FM in the technical brief that it filed with the Department of Industry (the Department).
16. In reply to the intervention by CIRPA, Byrnes stated that it generally agrees with the intervener's position and, in particular, with the importance that CIRPA accorded to independent ownership. With respect to CIRPA's comments on CTD, Byrnes considered that CTD expenditures should not necessarily be directed to FACTOR to the detriment of local initiatives. Byrnes noted, however, that it had allocated a portion of its overall CTD commitment to support FACTOR.
17. Byrnes did not reply to the two opposing interventions from individuals.

Commission's analysis and determinations

18. In Public Notice 2005-85, the Commission set out its determination that the Woodstock market can accommodate the introduction of a new commercial FM radio station that concentrates on providing service to the Woodstock market, and that the application by Byrnes best meets the evaluation criteria set out in the call for applications¹ and constitutes the best use of frequency 104.7 MHz.
19. The Commission considers that the 11 hours and 18 minutes of locally produced spoken word programming that the applicant has undertaken to broadcast each week, including 3 hours and 44 minutes of local news stories, will dramatically increase the amount of spoken word programming reflecting Woodstock that is available to listeners. The Commission further considers that the applicant's mainstream adult contemporary music format will complement both the classic rock programming of CKDK-FM and the Christian music provided by CJFH-FM, as well as provide a service to a broad range of adult listeners in the Woodstock market. Finally, the Commission considers that Byrnes will provide a new radio voice, with local ownership participation, for the Woodstock market, as well as for the Canadian broadcasting system.

¹ *Call for applications for a broadcasting licence to carry on a radio programming undertaking to serve Woodstock, Ontario*, Broadcasting Public Notice CRTC 2004-83, 8 November 2004.

20. With respect to the concerns raised by TBCL, the Commission notes that Byrnes has made a strong commitment to focus on providing service to Woodstock. It further considers that the approval in part of TBCL's application to convert CKOT to the FM band set out in Decision 2005-432 will strengthen TBCL's competitive position. With respect to the concerns raised by CHUM, the Commission notes the applicant's statement that it has responded to the intervener's concerns in its technical brief and that, in accordance with the Commission's usual practice, no licence will be issued until the Department has notified the Commission that its technical requirements have been met and that a broadcasting certificate will be issued. With respect to the concerns raised by CIRPA, the Commission notes that the applicant has proposed to broadcast a level of category 2 Canadian musical selections that is above the minimum set out in the *Radio Regulations, 1986* and that Byrnes will provide a new radio voice for Woodstock and for the Canadian broadcasting system. The Commission is further satisfied that the applicant has proposed initiatives for CTD that are worthwhile, including an annual contribution to FACTOR.
21. In light of all of the above, the Commission **approves** the application by Byrnes Communications Inc. for a broadcasting licence to operate an English-language FM commercial radio programming undertaking at Woodstock, at 104.7 MHz (channel 284A), with an average ERP of 1,910 watts.
22. Subject to the limitations set out below in paragraphs 24 to 26, the licence will be effective 1 September 2005 and will expire 31 August 2012 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. The licence will also be subject to the further **conditions** set out in the appendix to this decision, including a condition of licence requiring the licensee to ensure that at least 40% of the category 2 musical selections broadcast during the broadcast week are Canadian selections, as well as a condition of licence requiring the licensee to adhere to its commitments for CTD.
23. The Commission expects the licensee to ensure that its CTD initiatives, which are described earlier in this decision, as well as in the appendix to this decision, are eligible as direct contributions as set out in Appendix 1 of *An FM policy for the nineties*, Public Notice CRTC 1990-111, 17 December 1990.

Issuance of the licence

24. 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.
25. 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.

26. 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 25 August 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.

Employment equity

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

Appendix to Broadcasting Decision CRTC 2005-431

Conditions of licence

1. The licence will be subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999 (Public Notice 1999-137).
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in section 2.2(8) of the *Radio Regulations, 1986*, devote, in any broadcast week, a minimum of 40% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

For the purposes of this condition, the terms “broadcast week,” “Canadian selection,” “content category,” and “musical selection” shall have the same meaning as that set out in the *Radio Regulations, 1986*.

3. The licensee shall make direct expenditures of at least \$105,000 over seven consecutive years on the development of Canadian talent, as set out in this decision. Upon commencement of operations, this amount shall be distributed over seven consecutive broadcast years as follows:
 - \$400 in each broadcast year to the Foundation to Assist Canadian Talent on Records (FACTOR);
 - \$7,000 in each broadcast year to support the “Woodstock Idol” talent contest;
 - \$1,600 in each broadcast year to support the “FM104 Young Musician’s Award”; and
 - \$6,000 in each broadcast year for scholarships to support music students.

The amounts set out above include those required under the provisions of condition of licence number 5 in Public Notice 1999-137, which requires the licensee to make payments to third parties involved in Canadian talent development in accordance with the Canadian Association of Broadcasters’ Distribution Guidelines for Canadian talent development.