



Broadcasting Decision CRTC 2006-562

Ottawa, 28 September 2006

Kesitah Inc.

Winnipeg, Manitoba

Application 2006-0469-6

Broadcasting Public Notice CRTC 2006-63

19 May 2006

CFEQ-FM Winnipeg – Licence amendment

Kesitah Inc. filed an application requesting that the Commission delete a condition of its licence which requires that a minimum of 95% of all musical selections broadcast during each broadcast week be devoted to selections drawn from subcategory 35 - non-classic religious music. As an alternative to this preferred option, the applicant stated that it would be prepared to adhere to an amended condition of licence that would require it to ensure that a minimum level of 31% of all musical selections broadcast during the broadcast week be from subcategory 35.

*The Commission **denies** the application by Kesitah Inc. for a licence amendment, both that presented by the licensee as its preference and that it advanced as an alternative to that option.*

Background

1. In *Application for a youth-oriented Christian FM station to serve Winnipeg*, Broadcasting Decision CRTC 2002-226, 8 August 2002 (Decision 2002-226), the Commission awarded HIS Broadcasting Inc., subsequently renamed Kesitah Inc. (Kesitah), a specialty FM licence¹ to operate a Christian music station targeted to Winnipeg area youth between the ages of 12 and 24 years. The application was one of five proposals for new Winnipeg FM stations approved by the Commission that day, following a competitive radio hearing held in Winnipeg on 4 February 2002.
2. In its other decisions, the Commission approved an application by Global Communications Limited (Global) for a specialty FM licence to operate a commercial station offering a smooth jazz format. It also approved, in part, an application by Rogers Broadcasting Limited (Rogers) to convert its existing Winnipeg AM station CKY to an

¹ The Specialty FM format was defined in *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995 and amended in *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000. A private commercial FM station is considered to be operating in the Specialty format if it meets one or more of the following criteria: i) the language of broadcast is neither English nor French; ii) more than 50% of the broadcast week is devoted to Spoken Word; iii) less than 70% of the music broadcast is from Category 2 (Popular Music) as defined in Public Notice CRTC 2000-14.

FM station that would offer a classic rock hits format.² Further, the Commission approved an application by CKVN Radiolink Systems Inc. (Radiolink) for a specialty FM licence to operate a station offering a nostalgia format featuring adult standards and easy listening music from the 1920s to the 1970s. The Commission's fifth approval was of an application by Red River College Radio, on behalf of an organization to be incorporated (Red River), to operate a new instructional campus FM station in Winnipeg.

3. These decisions were accompanied by *Introductory statement to Decisions CRTC 2002-224 to 2002-228; Applications for new radio stations to serve Winnipeg*, Broadcasting Public Notice CRTC 2002-41, 8 August 2002 (Public Notice 2002-41). In Public Notice 2002-41, the Commission stated its determination that the Winnipeg market was able to sustain the operation of additional radio services. At the same time, the Commission noted that the advertising revenue growth and the average profitability of Winnipeg's eleven existing commercial radio stations were then below the national averages for the commercial radio industry. Specifically, the Commission noted that average radio advertising revenues for Winnipeg radio stations had grown by only 4% in 2001, and by 2% in 2002. It added that, while the average profit before interest and taxes (PBIT) margin for Winnipeg radio stations had grown consistently since 1996, the level of 12% obtained in 2001 was below the Canadian average PBIT margin of 16%.
4. The Commission emphasized that, taking these factors into account, the approach it had chosen to take in its decisions was to license new stations that were "not likely to compete directly with existing commercial stations owned by other licensees." The Commission noted, for example, that the smooth jazz format in which Global's specialty FM station was to operate would not compete directly with the format used by any existing commercial Winnipeg station. The Commission observed that the same was true of the nostalgia format proposed by Radiolink for its specialty FM station. In discussing Rogers' conversion of CKY to the FM band, the Commission considered that the classic rock hits format proposed for the station (now CKY-FM) "would likely have the greatest impact on Rogers' other FM station CITI-FM, which offers a classic rock format." In the case of Red River's new instructional campus FM station, the Commission cited the station's not-for-profit status, the fact that it would operate with an effective radiated power (ERP) of only 201 watts, and the applicant's very low advertising revenue projections, as factors that would minimize any impact the station might have on Winnipeg's existing commercial stations.
5. As for Kesitah's specialty FM station, the Commission acknowledged in Public Notice 2002-41 that Winnipeg listeners already had access to a Christian music station in the form of CHVN-FM, but pointed to the fact that the programming of the new station would target a much younger audience than that of CHVN-FM. The Commission indicated that it had also taken into consideration that the licensee of CHVN-FM, based on Kesitah's plans to direct its programming to a younger audience and to operate at an ERP of less than 1,000 watts, had submitted a letter expressing full support for the proposal.

² Rogers was directed to return to the Commission with a proposal for use of an acceptable frequency as an alternative to the frequency it had originally sought, that having been awarded by the Commission to Global.

6. In Decision 2002-226, the Commission noted Kesitah's modest audience and revenue projections, and the statement by the applicant's controlling shareholder, Mr. Tom Hiebert, that he and his wife would cover any financial shortfalls in the station's operations. It therefore expressed itself as satisfied that the station proposed by Kesitah:

...would not have a negative impact on Winnipeg radio stations that program mainstream pop rock and dance music. The Commission further notes that the format proposed... will target a younger audience than Winnipeg's existing Christian station CHVN-FM. In light of this fact, and the letter of support for the... application submitted by the president of CHVN-FM, the Commission is satisfied that the station... would not have a significant negative financial impact on CHVN-FM.

7. In the circumstances, consistent with the Commission's determination not to permit the introduction of new stations that were likely to compete directly with existing commercial stations, the Commission concluded that it was appropriate to impose, as conditions of licence, the applicant's commitments:

... to operate the proposed station in the specialty format, ensure that at least 95% of the musical selections played each broadcast week are drawn from subcategory 35 - non-classic religious, and to broadcast no more than 35% hit material in any broadcast week.

The present application and the applicant's rationale

8. In its present application, Kesitah has requested that the Commission amend the broadcasting licence for CFEQ-FM Winnipeg by deleting the existing condition of licence requiring that a minimum of 95% of all musical selections broadcast during each broadcast week be devoted to selections drawn from subcategory 35 - non-classic religious music. As an alternative to this preferred option, the applicant stated that it would be prepared to adhere to an amended condition of licence that would require it to ensure that a minimum level of 31% of all musical selections broadcast during the broadcast week be from subcategory 35.
9. In its application, Kesitah argued that an increase in CFEQ-FM's local advertising revenues was essential to the station's viability. It stated that its ability to generate local advertising revenue had consistently fallen short of the projections contained in its 2002 application. According to Kesitah, its problems stem from the reluctance of mainstream Winnipeg advertisers to buy CFEQ-FM because of its label as a "religious" or "Christian" station. It noted a similar reluctance on the part of traditional Christian advertisers to buy CFEQ-FM, and attributed this to CFEQ-FM's non-traditional programming style and the station's "liberal-ness". The licensee suggested that its inability to attract Christian advertisers has been exacerbated by the ready access such advertisers have to airtime purchased on Winnipeg's other Christian station, the adult-oriented CHVN-FM.

10. According to the licensee, the Christian label attached to CFEQ-FM has left it unable to attract either bank financing or equity financing to help relieve its financial difficulties. As well, Kesitah claimed that its label as a “Christian station” has limited its ability to attract a larger, more broadly-based audience among Winnipeg’s youth. The licensee attributed this to “misconceptions of what a Christian station can be,” and suggested that the small size of its audience, particularly among what it termed the “secular” youth demographic, was a major factor in CFEQ-FM’s inability to attract local mainstream advertisers to the station.
11. The elimination of its subcategory 35 music condition of licence or, in the alternative, a reduction in the current weekly level of subcategory 35 music it must program as a Specialty FM licensee would, in Kesitah’s words, “...take away the ‘Christian station’ stereotype problem.” The licensee suggested that approval of either of these proposed amendments would allow CFEQ-FM the flexibility to transform its music format into one that would sound more like that of a mainstream “secular” youth-oriented modern/alternative rock station, attract a larger and more broadly-based audience among youth, and garner sufficient local revenues to make it competitive in the market.

Interventions

12. Approximately 380 interventions were filed in relation to Kesitah’s application, and almost 98% of them were in support of its approval. With few exceptions, these supporting interventions were form letters expressing dissatisfaction with the fact that the Winnipeg market has no modern/alternative rock radio station. The text of these form letters suggested that, while Kesitah was attempting to fill that void, it should be relieved of its condition of licence so that it might respond fully to meeting the need for a conventional FM station in the modern/alternative rock format.
13. One intervener expressed a willingness to support a reduction, to a minimum required level of 31%, in the amount of weekly musical selections from subcategory 35, provided there could be a guarantee that Kesitah would actually air that amount of Christian music. The intervener suggested that CFEQ-FM does not currently broadcast even that minimum amount of category 35 music, and expressed concern that, if the deletion of the current condition of licence pertaining to category 35 music was approved, the station would likely cease to broadcast any Christian music.
14. There were six opposing interventions filed. Four were submitted by individuals whose general position was that CFEQ-FM should be required to maintain its original commitment to broadcast Christian music. Each of these individuals expressed the opinion that, in recent years, CFEQ-FM has substantially decreased the amount of Christian music it broadcasts in favour of mainstream modern rock music.
15. The two other opposing interventions included one by CHUM Limited (CHUM) and a joint submission by Rogers Broadcasting Limited and Standard Radio Inc. (Rogers/Standard). The joint Rogers/Standard intervention focussed on three principal

concerns, namely the impact of approval on the increasingly competitive state of the Winnipeg radio market, Kesitah's alleged non-compliance with its existing condition of licence, and the implications of the application's approval on the integrity of the Commission's licensing process. According to Rogers/Standard, such approval would "establish an inappropriate precedent" for Specialty FM licensees wishing to amend their licences in order to improve their competitive performance against conventional FM stations in a market. CHUM, in its intervention, also expressed concern about the effect that approval of Kesitah's application could have on existing commercial radio stations, given the tight and increasingly competitive Winnipeg radio market, and addressed the importance of maintaining the integrity of the Commission's competitive licensing process in the light of Kesitah's alleged non-compliance.

16. Rogers/Standard noted that, just as at the time CFEQ-FM was licensed in 2002, the average PBIT margin of Winnipeg's commercial radio stations in 2005 continued to rest well below the national average (13.5% as compared to the national figure of 20.9% for that year). Rogers/Standard also claimed that the Winnipeg market had become more competitive as a consequence of the Commission's approval last year of an application by Newcap Inc. to acquire effective control of Radiolink, licensee of the Specialty FM station CHNR-FM.³ According to Rogers/Standard, shortly following that decision, the station abandoned its nostalgia format for one that offers 60% category 2 Triple A (Adult Album Alternative) music and 40% category 2 Blues music.
17. Both Rogers/Standard and CHUM argued that CHNR-FM's format changes have lent the station a much more mainstream sound than it had when operating in the nostalgia format, and that the changes have essentially introduced a new entity to the Winnipeg radio market and an element of competition among its commercial stations of a magnitude not contemplated by the Commission at the time its licensed the six new Winnipeg FM stations in 2002.

Licensee's response

18. In responding to the allegations presented in the opposing interventions that Kesitah was broadcasting less than the required weekly level of subcategory 35 musical selections, the applicant argued that the definition of subcategory 35 - non-classic religious music was open to a much broader interpretation than had been suggested by the interveners. According to the licensee, its interpretation of the definition is the correct interpretation, and that CFEQ-FM has therefore operated, and continues to operate, in compliance with its condition of licence. In addressing the views of those individuals whose interventions called for retention of the existing condition of licence, Kesitah reiterated that its experience has demonstrated that the potential audience among Winnipeg radio listeners for category 35 - non-classic religious music, particularly if that category was to be defined as tightly as the interveners appeared to wish, was too limited to sustain or justify a radio station dedicated to its broadcast, and that approval of the present application to delete or amend the existing condition of licence is essential if CFEQ-FM is to remain in operation as a viable entity.

³ See *Transfer of effective control*, Broadcasting Decision CRTC 2005-554, 24 November 2005.

19. Regarding the concerns expressed by Rogers/Standard and CHUM about the competitiveness of the Winnipeg radio market, Kesitah's response was that its original licensing decision does not preclude it from competing with, or from being given the opportunity to compete with, existing Winnipeg commercial stations. It suggested that the "biggest competitive concern the Commission had" when considering the licensing of Kesitah's proposed station was to ensure that the proposed station "did not impact CKVN-FM."

Commission's analysis and determinations

20. The licensee suggested in its reply to interventions that the Commission's greatest concern in considering Kesitah's 2002 application for a Specialty FM licence was to ensure the proposed station would not have a negative impact on the incumbent Christian station CKVN-FM. In fact, as the Commission made abundantly clear in Decision 2002-226, in each of its other licensing decisions of 8 August 2002, and in Public Notice 2002-42 accompanying those decisions, its preoccupation at the time was to make certain that neither Kesitah's proposed station, nor any of the other four new Winnipeg FM stations approved on that date, were likely to compete directly with existing commercial radio stations serving that community. Underlying the approach taken by the Commission in those licensing decisions were its concerns for the underperformance of the Winnipeg radio market relative to the revenue earnings and profitability of radio stations on a national basis.
21. In the Commission's view, based on its 2005 Winnipeg radio market analysis, that market continues to underperform and the Commission's concerns continue to be justified. In this regard, the Commission is not unmindful of the competitive influence on the market brought about by changes to the format of CHNR-FM introduced by the new owners of that station earlier this year, and the much more conventional, mainstream sound these changes have given that station. The fact remains, however, that CHNR-FM continues to operate in compliance with its conditions of licence, one of which requires that it operate within the Specialty format, and another requiring it to ensure that no more than 60% of all musical selections broadcast during each broadcast week are selections drawn from category 2 – popular music.
22. The Commission notes that Kesitah's application requesting deletion of the condition of licence requiring that it provide a minimum amount of subcategory 35 - non-classic religious music was filed in CFEQ-FM's first licence term, during only its third year of operation, and following a very competitive public hearing process. With approval of that application, CFEQ-FM would cease to operate in the Specialty format and, instead, would have the same format flexibility as that now available to the seven commercial FM stations in Winnipeg now licensed to broadcast 70% or more of all musical selections from category 2.

23. Even were the Commission to approve the alternative proposed by the licensee, i.e., that its condition of licence be amended to require that a minimum level of 31% of all musical selections broadcast during the broadcast week be from subcategory 35 (instead of the 95% minimum level currently required), the Commission has little doubt that CFEQ-FM would program Category 2 music to a weekly maximum of 69%, providing Kesitah with almost the same programming flexibility it would have under its preferred option to transform CFEQ-FM's overall sound into that of a mainstream popular music station, away from the niche Christian music service originally proposed by Kesitah and approved by the Commission in 2002.
24. Although aware that this Specialty FM licensee's financial performance has fallen short of the projections set out in its 2002 business plan, the Commission does not consider this to be sufficient grounds for approval of the application to change CFEQ-FM's status from that of a Specialty to a conventional FM station. In the Commission's view, to approve that request, or to approve Kesitah's alternative proposal for an amendment to its existing condition of licence, would be to award the licensee entry to Winnipeg's mainstream commercial radio market through the back door. Such approval would constitute an inappropriate precedent and undermine the integrity of the Commission's competitive licensing process. In the circumstances, the Commission considers that, should Kesitah wish to be licensed to compete as a conventional FM radio licensee in the Winnipeg market, it should submit an application for the Commission's consideration under a competitive licensing process, and file for revocation of its current Specialty FM licence.
25. In the light of all of the above, the Commission **denies** the application by Kesitah Inc. for a licence amendment, both that presented as its preference and that advanced as an alternative to that option.
26. With respect to the statements by interveners and the licensee as to CFEQ-FM's ongoing compliance with its condition of licence requiring that 95% of all musical selections broadcast during each broadcast week be devoted to selections drawn from subcategory 35 - non-classic religious music, the Commission notes that it has advised Kesitah that this matter would be examined by the Commission at the time it considers the application for renewal of the CFEQ-FM licence, which expires 31 August 2009.

Secretary General

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