



Broadcasting Decision CRTC 2004-471

Ottawa, 1 November 2004

Fairchild Radio Group Ltd.
Toronto, Ontario

*Application 2003-1043-3
Broadcasting Public Notice CRTC 2004-5
22 January 2004*

CHKT Toronto – Licence amendment

*The Commission **approves** the application requesting the deletion of CHKT Toronto's conditions of licence that restrict the number of hours of programming which the station may direct to the Chinese community, and the hours during which it may broadcast programming in Mandarin and Cantonese.*

Background

1. In *Acquisition of assets – approved*, Decision CRTC 96-659, 3 October 1996 (Decision 96-659), the Commission approved an application by 1146129 Ontario Inc. (now known as Fairchild Radio Group Ltd. (Fairchild)) to acquire the assets of CKYC Toronto (now known as CHKT Toronto) and to change the station's format from predominantly country music to that of an ethnic radio station.
2. Many interveners, including four ethnic radio broadcasters serving the Toronto market at that time, had opposed the proposed ethnic radio station. The interveners expressed concern that, given the amount of programming to be offered in Chinese languages, the proposed station would have a negative impact on the existing ethnic radio stations in the market. As part of the application process, the licensee agreed to commit, by condition of licence, to its proposed program schedule, which had been designed to avoid scheduling conflicts with existing ethnic radio stations. Accordingly, in order to mitigate the impact of the proposed station on incumbent ethnic stations in the market, the Commission imposed the following conditions of licence on CHKT:
 - The licensee shall broadcast a maximum of 66 hours per broadcast week of ethnic programming directed to the Chinese community.

- The licensee shall restrict the hours during which programming is broadcast in Mandarin and Cantonese to the following:
 - (a) Mandarin - between 6:00 a.m. and 8:00 a.m. on weekdays, and;
 - (b) Cantonese - between noon and 8:00 p.m. Monday through Sunday.
3. The Commission imposed the same conditions of licence on CHKT in *Licence renewal for ethnic radio station CHKT*, Decision CRTC 2001-20, 18 January 2001, which renewed the station's licence until 31 August 2007.

The application

4. In its present application, Fairchild requested that the Commission amend CHKT's licence in order to delete the conditions of licence noted above.
5. In support of its application, Fairchild stated that these conditions reflect the program schedule proposed in its application to acquire the station in 1996, a program schedule that had been designed to minimize scheduling conflicts with the ethnic radio stations serving the Toronto market at that time. Fairchild submitted that the Toronto radio market has changed since 1996. It stated that, not only have ethnic radio stations changed the scheduling of the Mandarin- and Cantonese-language programming offered on their stations, but the overall number of hours of such programming has been steadily decreasing from a peak of approximately 175 hours weekly in 1997 to approximately 140 hours weekly in August 2003 even though the population of the Chinese community in the Toronto area has grown significantly. Given the reduction in the hours of Mandarin- and Cantonese-language programming and the concurrent population growth in the Chinese community in that city, Fairchild maintained that these condition of licence restrictions on CHKT are no longer needed. Fairchild pointed out that no other ethnic radio licensee in the Toronto market is subject to similar conditions of licence and argued that it should be permitted flexibility in order to be able to react to changes in the scheduling of Mandarin- and Cantonese-language programming broadcast on competing ethnic radio stations.
6. Fairchild indicated that, if its application were approved, it would accept a condition of licence requiring that a minimum of 52% of the programming aired on CHKT in each broadcast week be in Mandarin or Cantonese, which represents 66 hours. Fairchild also affirmed that it would continue to adhere to its condition of licence requiring that it provide programming directed to a minimum of 14 cultural groups in a minimum of 15 different languages.

Interventions

7. The Commission received two interventions in opposition to this application, one from Radio 1540 Limited (Radio 1540), the licensee of ethnic radio stations CHIN and CHIN-FM Toronto, and the other by Toronto Chinese Radio (TCR). TCR uses the facilities of CKFM-FM Toronto to provide a 24-hour subsidiary communications multiplex operations (SCMO) programming service in Cantonese and Mandarin to the Chinese community in the Greater Toronto Area (GTA).
8. Both interveners expressed concern that approval of this application would result in a reduction in the diversity of the programming offered by CHKT. They contended that Fairchild would increase the amount of programming directed to the Chinese community in Toronto and reduce the programming directed to other cultural groups, thereby substantially changing the balance in the programming offered by the ethnic radio stations in the market. Radio 1540 submitted that such a change would have a negative impact on its stations and on other licensed ethnic radio stations in the market. For its part, TCR argued that the total advertising expenditures targeting the Chinese community in the Toronto market is not sufficient to support additional hours of programming in Mandarin or Cantonese. According to the intervener, the approval of Fairchild's application would threaten the survival of TCR's SCMO service.
9. Radio 1540 also submitted that the availability of Chinese-language programming was an important consideration in the competitive licensing processes undertaken by the Commission in 2000¹ and 2002², respectively. In Radio 1540's view, the approval of Fairchild's application would compromise the integrity of those licensing processes. The intervener further submitted that it is too early to evaluate the impact that the three new ethnic radio services approved by the Commission in 2003³ could have on the incumbent licensed ethnic radio stations in Toronto. To date, none of these undertakings have commenced operations.

The applicant's response

10. In response, Fairchild maintained that the deletion of the conditions of licence in question would not reduce the diversity of programming offered by CHKT because it would continue to adhere to the condition of licence requiring that it provide service to 14 cultural groups in 15 different languages. Fairchild further stated that it has consistently exceeded the requirements of this condition of licence and usually serves between 18 and 21 different language groups.

¹ *Call for applications for a broadcasting licence to carry on a radio programming undertaking to serve Toronto, Ontario*, Public Notice CRTC 1999-119, 20 July 1999.

² *Call for applications for a broadcasting licence to carry on a radio programming undertaking to serve Toronto, Ontario*, Public Notice CRTC 2001-39, 22 March 2001.

³ *Ethnic FM radio station in Toronto*, Broadcasting Decision CRTC 2003-115; *Stand-alone ethnic transitional digital radio undertaking in Toronto*, Broadcasting Decision CRTC 2003-118; and *Ethnic AM community radio station in Toronto*, Broadcasting Decision CRTC 2003-117, all dated 17 April 2003.

11. Fairchild submitted that the “mix of ethnic programming” in the Toronto radio market has changed substantially since 1996, including a reduction in Mandarin- and Cantonese-language programming offered in each broadcast week from approximately 175 hours in 1997 to approximately 140 hours in 2003. The applicant indicated that, because of these conditions of licence, CHKT does not have the scheduling flexibility to compete in the new environment. Fairchild noted that Toronto ethnic radio stations CJMR, operated by Trafalgar Broadcasting Limited, and CIAO-FM, operated by CKMW Radio Ltd., no longer offer any programming in Mandarin or Cantonese. The applicant also noted that the amount of Fairchild-brokered programming aired in each broadcast week on Toronto ethnic radio station CIRV-FM, operated by CIRC Radio Inc., has been reduced, by mutual agreement of the parties, from 31 hours to 27 hours. In addition, the changes in the scheduling of Mandarin- and Cantonese-language programming on competing ethnic radio stations have disadvantaged CHKT. As an example, Fairchild stated that it was unable to adjust its own schedule when, in March 2004, radio station CHIN began providing programming in Cantonese between 1:00 p.m. and 8:00 p.m., Monday to Friday, directly competing with CHKT’s Cantonese-language programming offered during the same hours.
12. The applicant claimed that the other ethnic radio stations in the market have benefited from CHKT’s conditions of licence that restrict its service to the Chinese community. Fairchild contended that, rather than having a negative impact on other ethnic radio stations, the approval of the application would enable CHKT to “achieve competitive parity” with them and thereby restore balance in the market.
13. With respect to TCR’s claim of insufficient advertising revenues in the Toronto market to finance additional programming directed to the Chinese community, Fairchild argued that there are opportunities for growth in this area because, even though the Chinese community has grown, it currently receives fewer hours of programming in Mandarin or Cantonese than it did in 1997. Fairchild also noted that in *Introductory statement to Broadcasting Decisions CRTC 2003-115 to 2003-120*, Broadcasting Public Notice CRTC 2003-20, 17 April 2003 (Public Notice 2003-20), the Commission stated that ethnic radio advertising revenues in Toronto increased by 23% from 1997 to 2001.
14. Fairchild also dismissed Radio 1540’s argument that approval of the proposed licence amendments would undermine the integrity of the Commission’s licensing processes. According to Fairchild, the deletion of these conditions of licence would be consistent with the Commission’s approach to the licensing of new Toronto ethnic radio services in 2003. Fairchild noted that, in the case of the ethnic radio services licensed, the Commission imposed conditions of licence requiring that each licensee broadcast a minimum, rather than a maximum, number of hours of programming targeted to its primary audience.

The Commission's analysis and determination

15. The Commission has considered the record of this proceeding and is persuaded by Fairchild's arguments that no other ethnic radio licensee in the Toronto market is subject to similar conditions of licence, and that the broadcast environment of that market has changed substantially since 1996 when the Commission imposed these conditions of licence in order to mitigate the impact of the ethnic radio station authorized in Decision 96-659 on existing ethnic radio stations.
16. The Commission has also considered the fact that, of the five over-the-air ethnic radio licensees currently serving the Toronto market, only one filed an intervention to this application. Furthermore, none of the successful applicants for Toronto ethnic radio services approved in 2003 submitted interventions to this application.
17. Based on its examination of the application, the Commission is satisfied that approval of this application will not result in a reduction in the diversity of the programming offered by CHKT. In this regard, the Commission has noted the assurances given by Fairchild that it will continue to abide by its condition of licence stipulating that CHKT provide service to 14 cultural groups in 15 different languages. The Commission has also noted Fairchild's statement that it has consistently exceeded the requirements of this condition of licence and usually serves between 18 and 21 different language groups. Fairchild should ensure that all the cultural groups that CHKT serves are given fair access to airtime.
18. With respect to the concerns raised in the intervention by TCR, the Commission notes that the programming broadcast using an SCMO is not accessible with standard radio equipment and requires the use of a special receiver. Unlike conventional radio programming undertakings, SCMO services are not required to offer a minimum level of Canadian content, to make financial contributions to Canadian talent development or, in general, to make specific programming commitments. Consequently, while the Commission recognizes the value of SCMO services, it has not generally considered the potential impact upon existing SCMO services to be a major factor in making licensing decisions pertaining to over-the-air ethnic radio stations.
19. With regard to the view set out by Radio 1540 that it is too early to evaluate the impact of the new ethnic radio stations approved in 2003, the Commission notes that, as stated in Public Notice 2003-20, the impact of a new entrant on existing stations is one of the factors that it took into account in reaching its determinations on the applications for new ethnic radio services to serve the GTA. Furthermore, the Commission notes that none of the successful applicants for the ethnic services approved in 2003 proposed to offer a significant amount of programming in Mandarin or Cantonese.

20. In light of all of the above, the Commission finds that there is no longer a need to maintain these condition of licence restrictions on CHKT. The Commission, therefore, **approves** the application by Fairchild Radio Group Ltd. to amend the broadcasting licence for the radio programming undertaking CHKT Toronto in order to delete the conditions of licence that restrict the number of hours of programming which the station may direct to the Chinese community, and the hours during which it may broadcast programming in Mandarin and Cantonese.
21. Given Fairchild's history of broadcasting and producing Chinese-language programming and the continued growth of this community in Toronto, the Commission finds that it does not need to impose the alternative condition of licence proposed in Fairchild's application, which would have required that a minimum of 52% of the programming aired by CHKT in each broadcast week be in Mandarin or Cantonese.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>