

9 January 2005

Ms. Diane Rhéaume
Secretary-General
Canadian Radio-Television &
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Re: Broadcasting Public Notice CRTC 2005-118: Item 1 - Aboriginal Voices
Radio Inc. Application No. 2005-1468-9

Dear Ms. Rhéaume:

Introduction

1. Aboriginal Voices Radio (AVR) is requesting an extension of the time limit to commence the operation of its Native Type B radio programming undertakings at Vancouver and its transmitter at Abbotsford, Calgary, Ottawa and Montreal until September 1, 2006.
2. CBC/Radio-Canada wishes to take this opportunity to provide a general comment with respect to AVR's situation in Vancouver.
3. In its letter to the CRTC dated October 31, 2005 AVR states its intention to file a brief with Industry Canada proposing the use of 92.3MHz (Channel 222). AVR also states that it has evaluated the possible use of alternative frequency options and concludes that no frequency but 92.3 MHz will provide suitable coverage of Vancouver, although no evidence of any such assessment is provided. AVR goes on to state that it is currently in discussion with CBC/Radio-Canada in an effort to secure the Corporations agreement to alter its Salt Spring Island transmitter CBU-FM-1 to reduce the potential for interference from CBC's Radio Two service in Vancouver but that it will propose the use of 92.3 MHz irrespective of whether it secures CBC/Radio-Canada's cooperation or not.

4. The public record on this matter is an extensive one stretching back five years to the licensing of AVR in Vancouver in Decision CRTC 2001-314. We will not recreate that record here. However, we wish to highlight certain aspects of this situation to assist the Commission in making its determination with respect to AVR's application for an extension in Vancouver.
5. AVR's preference for the 92.3 MHz frequency is, and has been from the outset, problematic for a number of important reasons:

A. 92.3 MHz is a First Adjacent Channel

6. 92.3 MHz is a first adjacent channel, which violates Industry Canada's Broadcasting Procedure and Rules Part 3 (BPR). Industry Canada cannot accept the use of this frequency by AVR without violating its own regulations. In 2002, Industry Canada, in response to AVR's continued insistence that 92.3 MHz is the only frequency choice that meets AVR's coverage objectives, suggested that if CBC/Radio-Canada were willing to alter the transmission parameters of its Radio Two transmitter (CBU-FM-1) on Salt Spring Island, then AVR's choice of frequency would be technically acceptable.
7. In response to Industry Canada's suggestion, CBC studied the matter closely and determined that changing the transmission parameters of CBU-FM-1 to reduce the potential for interference with 92.3 MHz was not feasible because it would result in loss of Radio Two service to listeners in the Fraser Valley, on Vancouver Island and along the shoreline of the mainland around and South and North of Vancouver. This would impact as many as 1.6 million residents in those areas. Considering this outcome, CBC will not alter the transmission parameters for CBU-FM-1 to accommodate AVR's proposed use of 92.3 MHz. That determination has been well documented and communicated to AVR, Industry Canada and the CRTC on numerous occasions.
8. Therefore, AVR's proposed use of 92.3 MHz continues to be in violation of Industry Canada's Broadcasting Procedure and Rules Part 3 and continues to be an unacceptable choice to CBC/Radio-Canada.

B. Alternate Frequency is Available

9. The suggestion by Industry Canada in 2002 for CBC to consider altering the transmission parameters of CBU-FM-1 was made at a time when there were no frequency options in Vancouver and it was prior to the amendments Industry Canada made to its regulations on second and third adjacent channels.

10. When Industry Canada modified its regulations on second and third adjacent channels, two new frequency options became available to AVR – 104.1MHz (Channel 281) and 106.3 MHz (Channel 292). CBC went to considerable effort and cost to identify and test, with Industry Canada's approval, the viability of these frequency options for AVR (see, among others, D.E.M. Allen & Associates Engineering briefs on channel 281 and 292, dated January 17, 2003 and CBC's measurement report ER-529, dated September 30, 2003).
11. However, these alternatives have been consistently rejected by AVR because apparently they do not fully address AVR's preferred coverage objectives. Because so much time has lapsed from AVR's original licensing almost five years ago, AVR's options are shrinking. Channel 281 is no longer available in Vancouver and if action isn't taken soon on Channel 292, it too could be eliminated as an option for the market.
12. We would note that 106.3 MHz (Channel 292) is now the only remaining frequency in the Vancouver market and it is being effectively held in reserve for AVR by Industry Canada. FM frequencies in major markets are an increasingly scarce resource and broadcasters have had to learn to adapt their coverage expectations to what's available in the market. AVR needs to do the same.

Conclusion

13. If CRTC accepts AVR's proposed time limit extension to September 1, 2006, then we would suggest that the Commission *encourage* AVR in its decision to apply for the only remaining frequency in Vancouver - 106.3 MHz (Channel 292). AVR needs to be encouraged to move expeditiously in this matter. 106.3 MHz could disappear as a frequency option for Vancouver as a result of changes in power levels by U.S. border broadcasters. The CRTC should also indicate a deadline for the submission of technical briefs to Industry Canada.
14. If AVR continues to insist on the use of an inappropriate and contested frequency, 92.3MHz, then that will only result in further delays to AVR's launch in Vancouver. CBC/Radio-Canada will not reduce Radio Two coverage to accommodate AVR's preferred frequency choice. If AVR does not move quickly with respect to 106.3 MHz, then that window may close and there will be no viable frequencies left on the FM band in Vancouver.

15. Finally, if for whatever reason AVR continues to reject 106.3 MHz, then the Commission should be prepared to entertain applications for the use of 106.3 MHz from other broadcasters.

All of which is respectfully submitted.



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