



Broadcasting Decision CRTC 2003-603

Ottawa, 17 December 2003

BEA-VER Communications Inc.
Chatham and Windsor, Ontario

Application 2002-0366-2
Public Hearing in the National Capital Region
26 May 2003

CKUE-FM Chatham – New transmitter in Windsor

*The Commission **approves** the application by BEA-VER Communications Inc. (Bea-Ver) to amend the licence for CKUE-FM, Chatham by adding a transmitter at Windsor. Bea-Ver will also establish a studio in Windsor to produce 42 hours of programming each week.*

The application

1. The Commission received an application by BEA-VER Communications Inc. (Bea-Ver) to amend the licence for the radio programming undertaking CKUE-FM, Chatham as follows:
 - to add a transmitter at Windsor. The new transmitter would be a synchronous repeater of CKUE-FM; that is, it would use the same 95.1 MHz frequency as CKUE-FM's main transmitter in Chatham. The new transmitter would operate with an effective radiated power of 400 watts.
 - to increase the minimum amount of local programming that must be broadcast from 42 to 84 hours per broadcast week. The licensee stated that 42 hours of its local programming would originate from new studios in Windsor. The remainder would be produced in CKUE-FM's existing studios in Chatham.
 - to increase CKUE-FM's annual financial obligations with respect to Canadian talent development, so that, in addition to its current required contribution of \$400 dollars per year, the licensee would contribute \$110,000 over seven years. These additional funds would be disbursed as follows: \$5,000 in Year 1, \$10,000 in Year 2, \$15,000 in Year 3, and \$20,000 each year in Years 4 through 7. The licensee indicated that the \$110,000 would be paid to the University of Windsor to underwrite scholarships for music and journalism students.

- to amend CKUE-FM's condition of licence to specify that it must, in any broadcast week, broadcast less than 85% hit material. CKUE-FM's current condition of licence specifies that CKUE-FM must broadcast less than 50% hit material.¹
2. CKUE-FM offers a classic rock format – a format designed to appeal to those 18 to 44 years of age, with an emphasis on a male target audience. The applicant was of the view that its proposal would allow CKUE-FM to provide Windsor residents with a second Canadian private radio voice and an additional source of local information, while it continued to serve its existing audience in the Chatham area. The applicant submitted that its proposal, while unique, reflected the flexible approach that the Commission has adopted for regulating radio stations serving the Windsor market.

Background

The Commission's approach to the Windsor radio market

3. The Commission has, historically, recognized the special circumstances of the Windsor radio market. In *Windsor Radio Review*, Public Notice CRTC 1984-233, 25 September 1984 (the Windsor Radio Review), the Commission acknowledged that Windsor radio licensees, who compete for local listeners with the many stations located just across the St. Clair River in Detroit, Michigan, operate in an environment unparalleled anywhere in Canada. The Commission therefore stated that it was prepared to regulate radio licensees operating in Windsor in a flexible manner. The Commission, however, established the following principle that would govern its approach to the regulation of Windsor radio stations:

... the Commission is of the view that its objectives in Windsor will be achieved by programming services that reflect a firm Canadian orientation in their approach to the provision of spoken word and music programming.

4. All four Windsor commercial radio stations, CKWW, CKLW, CIMX-FM and CIDR-FM are now owned by CHUM Limited (CHUM) and, in view of the unique circumstances of the Windsor market, are regulated in a manner that differs from the regulation of other commercial radio stations in the following ways:
 - Both FM stations are exempt from the requirement that commercial FM stations must ensure that the level of hit material that they air each broadcast week is below 50%.
 - Both FM stations, as well as CKLW, must ensure that at least 20% of the category 2 musical selections that they play each broadcast week are Canadian. The minimum level for other Canadian AM and FM stations is 35%.

¹ Hit material is defined in *Revised policy on the use of hits by English-language FM radio stations*, Public Notice CRTC 1997-42, 23 April 1997.

- Both FM stations are exempt from the condition of licence that requires Commission approval before they begin to operate in the specialty format (e.g. jazz or classical).
 - Both FM stations and CKLW have conditions of licence requiring them to broadcast at least 1 hour and 30 minutes of news each week. The FM stations must also ensure that they devote at least 5% of the programming aired during each broadcast week to spoken word.
 - CHUM's ownership of all four commercial radio stations in Windsor is an exception to the common ownership policy set out in *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998 (the Commercial Radio Policy). The Commercial Radio Policy provides that, in markets with less than eight commercial radio stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band.
5. Minimum requirements with respect to the level of spoken word and news that commercial FM stations must broadcast were generally eliminated in 1993.² However, such requirements were retained for Windsor stations because CHUM owned all commercial radio stations in the market and also because of the Windsor Radio Review's call for radio stations that reflected a firm Canadian orientation to the provision of spoken word programming.

Interventions

Supporting interventions

6. Two interventions were received in support of the Bea-Ver application. One, from Arnold Blaine, also included 11 letters of support from musicians, potential listeners and civic groups. The Ottawa Street Business Association also supported Bea-Ver's application, considering that the presence of CKUE-FM would make available, to Windsor residents, an additional radio station that concentrates on Canada.

Opposing intervention from CHUM Limited

7. CHUM filed an intervention that opposed Bea-Ver's application. As noted above, CHUM owns all four commercial radio stations that currently serve Windsor. CHUM argued that its radio stations already cover a broad demographic spectrum by offering a modern rock format to adults 18 to 24 years old on CIMX-FM, lite rock to adults 25 to

² See *Policies for local programming on commercial radio stations and advertising on campus stations*, Public Notice CRTC 1993-38, 19 April 1993 and *Amendments to the Radio Regulations, 1986; Elimination of minimum requirements for spoken word content*, Public Notice CRTC 1993-113, 28 July 1993.

54 years old on CIDR-FM, nostalgia to adults 50 years of age and over on CKWW, and news and information to adults 25 years old and over on CKLW. CHUM submitted that adding CKUE-FM would not add programming diversity to the market, but would rather fragment the audience to CHUM's existing services, especially CIDR-FM.

8. CHUM disputed Bea-Ver's assertion that 20% of CKUE-FM's revenues would be generated from tuning repatriated from U.S. stations, given that CKUE-FM's Windsor transmitter would operate with a power of only 400 watts. CHUM noted that CIDR-FM only generates 21% of its local sales from the U.S. even though it operates with a power of 100,000 watts. CHUM was also concerned that Bea-Ver had projected that 40% of CKUE-FM's revenue would come from new advertisers. CHUM considered that this demonstrated that CKUE-FM could have a significant impact on CIDR-FM, since local retail sales accounted for the majority of CIDR-FM's business.
9. In conclusion, CHUM considered that the operators of CKUE-FM should find client support for their station in Chatham rather than by extending the station's signal to Windsor.

Bea-Ver's reply to the CHUM intervention

10. Bea-Ver contended that CKUE-FM would provide diversity to the Windsor market, arguing that CKUE-FM's classic rock format was different from that offered by any of the CHUM stations. Its view was that, while Windsor residents were able to receive classic rock stations from Detroit, none of the Detroit stations broadcast levels of Canadian musical selections that approached the 35% level broadcast by CKUE-FM, nor do they provide any Canadian news, weather and sports or significant support for Canadian talent.
11. Bea-Ver also argued that its projections for revenues drawn from the Windsor market were modest. It indicated that it projected to draw only one-third of a million dollars from Windsor in the first year of operation, and suggested that these revenues would be compensated for by market growth alone, rather than on revenues now going to existing stations. Bea-Ver further submitted that the presence of CKUE-FM would have a stimulating effect on the market since the station would provide a way for advertisers to reach listeners that they do not currently reach. Bea-Ver also noted that, since CKUE-FM would not be receivable in Detroit, it would not compete with the CHUM stations for revenues from U.S. advertisers.
12. Finally, Bea-Ver submitted that its application presented an opportunity for it to earn additional revenues with little impact on existing stations. At the same time, Bea-Ver argued that CKUE-FM would provide a new Canadian format in the Windsor market, as well as an additional source of Canadian national, regional and local news from a new voice. It further noted that, if approved, CKUE-FM would be the only Windsor private station providing a 35% level of Canadian musical selections.

The Commission's analysis and determinations

13. Bea-Ver's application differs significantly from most other applications to establish rebroadcasting transmitters for commercial radio stations. Most such applications involve proposals to extend the service of a station from its primary market to smaller areas that are not served by local stations. In this case, Bea-Ver proposed to establish a transmitter that would extend CKUE-FM's signal from its primary market of Chatham into the much larger Windsor market served by the CHUM stations. Bea-Ver argued that there were no frequencies available in Windsor to establish a new station, but that the use of a synchronous repeater transmitter would allow CKUE-FM to also cover Windsor, albeit to a limited extent, as it continued to broadcast on its current frequency of 95.1 MHz.
14. In addition, Bea-Ver has proposed to establish a studio in Windsor that would be used to originate a significant portion of CKUE-FM's local programming. As a result, CKUE-FM would not only extend its signal to Windsor, but would also provide a regional service that would include content oriented to Windsor.
15. This application raises a number of issues, which are discussed below.

The ability of the Windsor radio market to sustain a new player

16. As indicated previously, all four commercial radio stations in Windsor are currently owned by CHUM. Windsor radio has been growing in revenues and profitability since 1999, and the Profit Before Interest and Taxes (PBIT) of Windsor radio has exceeded the national average for English-language radio in each of the past three years.
17. Since CKUE-FM currently programs a classic rock format, a musical format not currently offered by any of the Windsor commercial radio stations, the Commission considers that CKUE-FM would compete most directly with the classic rock stations situated in Detroit, rather than with other radio stations in Windsor. Furthermore, as the Windsor transmitter would operate with a power of only 400 watts, and its interference-free contour would cover only about 175,000 of the city's total population of about 322,000, the Commission considers that this would reduce the potential impact of CKUE-FM on the Windsor market.
18. In light of the above, the Commission considers that the Windsor radio market could sustain the introduction of CKUE-FM, as proposed by the applicant.

The adequacy of the service that will be provided to Windsor and to Chatham

19. At the hearing, and in correspondence with the applicant, the Commission explored how CKUE-FM would serve Windsor while still providing adequate service to the Chatham area.
20. Bea-Ver indicated that CKUE-FM's spoken word programming would total about 6% of the broadcast week, including two hours per week of news. The applicant indicated that it would accept the same conditions of licence related to spoken word and news that

currently apply to each of the existing Windsor FM stations. These conditions specify that, during each broadcast week, at least 5% of all programming must be spoken word, and at least 1 hour and 30 minutes of programming must be News.

21. The applicant indicated that the Windsor studio would generally originate programming from 6 a.m. until noon and from 3:30 p.m. to 6 p.m., with all other programming originating in Chatham. Two programming staff and two news staff would be located in Windsor. The news staff would be responsible for gathering and writing the Windsor news. Commercial advertisements would be produced in Chatham, leaving Windsor programming staff free for other duties, such as hosting music-oriented programs.
22. There would be five programming and news staff of CKUE-FM in Chatham. Although the amount of total spoken word and news on the station would not increase from current levels, Bea-Ver argued that CKUE-FM would provide a regional service that would be attractive to residents of Windsor and Chatham, who share common interests and often commute between the two cities.
23. The Commission concludes that while, under Bea-Ver's proposal, the total amount of news and total spoken word programming broadcast by CKUE-FM would be similar to the minimum levels that the Canadian FM stations now serving Windsor must achieve, CKUE-FM would provide some limited additional local coverage of news and other local events to Windsor listeners.

The Bea-Ver application and the policy established in the *Windsor Radio Review*

24. As noted above, the Commission has recognized that the Windsor market is unique, and has regulated radio stations that operate in Windsor in a flexible manner. The Commission has, however, established the principle that Windsor radio stations should reflect a firm Canadian orientation in their approach to the provision of spoken word and music programming.
25. The Commission notes that CKUE-FM's signal would not cover all of Windsor, and that the amount of information designed especially for Windsor residents would be more limited than on a station that would serve only Windsor. However, given the lack of available frequencies in Windsor, CKUE-FM's proposal may be the only practical way to ensure that Windsor residents are served by a second private radio voice.
26. Further, given that CKUE-FM's signal would not reach Detroit, the spoken word programming would be designed for a Canadian audience only. As well, CKUE-FM would be required under the *Radio Regulations, 1986*, to ensure that at least 35% of all Category 2 musical selections broadcast during each broadcast week are Canadian. As such, CKUE-FM would provide a Canadian alternative to the classic rock stations in Detroit and may serve to repatriate some Canadian listeners who currently tune to Detroit stations. CKUE-FM's 35% level of Canadian musical selections would also exceed the 20% level of Canadian musical selections programmed by the CHUM FM stations serving Windsor. Thus, CKUE-FM would provide Windsor residents with an additional radio choice with a Canadian orientation both in terms of music and spoken word.

Conclusion

27. In light of the above, the Commission **approves** the application by Bea-Ver to amend the licence for the radio programming undertaking CKUE-FM Chatham to add a transmitter in Windsor. The new transmitter will operate at 95.1 MHz (channel 236A) with an effective radiated power of 400 watts.
28. In accordance with commitments made at the public hearing, the licence is subject to the following **conditions**:
 - The licensee shall, during each broadcast week, devote a minimum of 1 hour and 30 minutes of programming to material from content subcategory 11: News.
 - The licensee shall during each broadcast week, devote a minimum of 5% of all programming to material from content category 1: Spoken Word.
29. CKUE-FM is currently subject to the conditions of licence for commercial FM stations set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999 (Public Notice 1999-137). The Commission **approves** Bea-Ver's proposals to amend conditions of licence in Public Notice 1999-137 related to local programming and Canadian talent development that are applicable to CKUE-FM. The amended **conditions of licence** are as follows:
 - In addition to the requirements set out in condition of licence number 5 set out in Public Notice CRTC 1999-137, the licensee shall contribute to third parties involved with Canadian talent development \$5,000 in 2004, \$10,000 in 2005, \$15,000 in 2006 and \$20,000 in each of the four subsequent broadcast years. The licensee shall report the names of the third parties associated with Canadian talent development, together with the amounts paid to each, concurrently with its annual return. The payments required under this condition of licence are over and above any outstanding commitments to Canadian talent development offered as benefits in an application to acquire ownership or control of the undertaking.
 - The licensee shall refrain from soliciting or accepting local advertising for broadcast during any broadcast week when less than 84 hours of the programming aired is local. The definition of local programming shall be as set out in *Policies for local programming on commercial radio stations and advertising on campus stations*, Public Notice CRTC 1993-38, 19 April 1993, as amended from time to time.
30. CKUE-FM is also currently subject to condition of licence number 10 set out in Public Notice 1999-137 which provides that the licensee must broadcast, in any broadcast week, less than 50% hit material, as defined in *Revised policy on the use of hits by English-language FM radio stations*, Public Notice CRTC 1997-42, 23 April 1997, as amended from time to time. As part of this proceeding, Bea-Ver applied to amend this condition of

licence to specify that CKUE-FM must, in any broadcast week, broadcast less than 85% hit material. The Commission notes, however, that the two commercial FM stations that now serve Windsor are not subject to any restrictions on the level of hit material that they broadcast. The Commission considers it appropriate to also grant CKUE-FM an exemption from all limits on the level of hit material that may be broadcast. The Commission therefore **deletes** condition of licence number 10 from the list of conditions of licence set out in Public Notice 1999-137 to which CKUE-FM must comply.

Issuance of the licence

31. 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.
32. The Commission reminds the licensee that, pursuant to section 22(1) of the *Broadcasting Act*, this authority will only be effective when the Department notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.
33. The transmitter 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 17 December 2005. In order to ensure that such a request is processed in a timely manner, it should be submitted in writing at least 60 days before this date.

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>