



## Broadcasting Decision CRTC 2003-153

Ottawa, 14 May 2003

**Larche Communications Inc.,  
on behalf of a corporation to be incorporated**  
Kitchener-Waterloo, Ontario

**Douglas E. Kirk, on behalf of a corporation to be incorporated**  
Kitchener-Waterloo, Ontario

**Edward F. Bauman and Rae Roe,  
on behalf of a corporation to be incorporated**  
Kitchener-Waterloo, Ontario

**Trust Communications Ministries**  
Kitchener-Waterloo, Ontario

*Applications 2002-0173-1, 2002-0177-3, 2001-0836-7 and 2002-0168-2  
Public Hearing at Kitchener, Ontario  
28 October 2002*

### **Country FM radio station in Kitchener-Waterloo**

*In this decision, the Commission announces the determinations it has reached following its consideration of four applications proposing new commercial FM radio stations to serve Kitchener-Waterloo and that were filed by Larche Communications Inc., on behalf of a corporation to be incorporated (Larche), Douglas E. Kirk, on behalf of a corporation to be incorporated (Kirk), Edward F. Bauman and Rae Roe, on behalf of a corporation to be incorporated (Bauman/Roe) and Trust Communications Ministries (Trust). The Larche, Kirk and Bauman/Roe applications were treated by the Commission as competing against each other due to the similarities between the individual musical formats proposed.*

*The fourth applicant, Trust, proposed an English-language radio station that would offer Christian music and other religious programming. Trust's application was thus not competing with the Larche, Kirk and Bauman/Roe applications on marketing grounds. However, all four of the applications were predicated on the use of frequency 99.5 MHz, and were thus technically mutually exclusive, and competitive on technical grounds.*

*The Commission **approves** the Larche application to establish a new FM station in Kitchener-Waterloo that will operate in a country format. The applications by Kirk, Bauman/Roe and Trust are **denied**.*

*Larche's proposed station is one of four new FM radio stations authorized in decisions issued today to provide service to the Kitchener-Waterloo area. In total, these decisions deal with ten applications for new FM radio stations that were considered at the 28 October 2002 Public Hearing in Kitchener. The decisions are accompanied by Introduction to Broadcasting Decisions CRTC 2003-152 to 2003-155 – Licensing of new FM radio stations to serve Kitchener-Waterloo, Broadcasting Public Notice CRTC 2003-25, 14 May 2003.*

## **The applications**

1. Applications were received by the Commission from four parties proposing to serve Kitchener-Waterloo with FM radio stations using the frequency 99.5 MHz.
2. Three of the four parties were Larche Communications Inc., on behalf of a corporation to be incorporated (Larche), Douglas E. Kirk, on behalf of a corporation to be incorporated (Kirk), and Edward F. Bauman and Rae Roe, on behalf of a corporation to be incorporated (Bauman/Roe). Larche proposed to feature country music that would be attractive to an audience between the ages of 25 and 54. The Kirk application proposed a "new country" format, targeted to an age group 18-64. The Bauman/Roe proposal was for a country station that would appeal to an audience aged 35-64.
3. The fourth application, by Trust Communications Ministries (Trust), proposed to provide an English-language commercial specialty FM in Kitchener-Waterloo that would offer Christian music and other religious programming. Trust is the licensee of an existing radio station, CJLF-FM, a Christian music station serving Barrie, Ontario, with transmitters in Peterborough and Owen Sound.
4. Larche Communications Inc. is the licensee of an existing radio station, CICZ-FM Midland, and Douglas E. Kirk has controlling interests in CIWV-FM Hamilton and CJKX-FM Ajax, as well as minority interests in a number of other radio stations in Ontario. Neither Edward F. Bauman nor Mr. Rae Roe is a licensee at this time.

## **Interventions**

5. Interventions in support of the Larche application were submitted by 36 groups and individuals. Comments received from the Pearson-Shoyama Institute are discussed in the section below entitled "Cultural diversity".
6. One hundred and three interventions in support of the Kirk application were submitted to the Commission. An intervention in opposition was received from Mr. Ron Williams of Kitchener, expressing his disapproval of Kirk's plan to use 99.5 MHz, based on his preference for listening to a Buffalo radio station on this frequency. Mr. Williams would prefer to see this frequency used for local Christian programming. A comments was also submitted by Mr. Jordon Hofstetter, who suggested that any new entrant to the Kitchener-Waterloo radio market should enhance the existing diversity in that market. Mr. Hofstetter's comments were also applicable to the Bauman/Roe application.

7. Interventions in support of the Bauman/Roe application were submitted by 47 groups and individuals. Mr. Ron Williams also opposed this application on the basis that the 99.5 MHz frequency should be used for local Christian programming. Comments were also received from Mr. Jordon Hofstetter and the City of Kitchener. The City of Kitchener expressed the view that any new station should provide a viable local presence through its programming, and have no negative effect on existing local stations.
8. Over 200 interventions in support of the Trust application were submitted to the Commission. One intervention in opposition was received from Mr. Jeffrey Shallit. Mr. Shallit expressed his concern that adherents of other religions often feel intimidated by the domination of Christian voices in local media. In reply to Mr. Shallit, Trust indicated that it has received thousands of letters from listeners who do not share Mr. Shallit's opinion, and that there are various radio format options for people with differing musical tastes.

### **Assessment of the Larche, Kirk and Bauman/Roe applications**

9. In its assessment of applications for new commercial radio stations, the Commission takes into account four main factors or bases of comparison that it has identified as being relevant. While the relative importance of the factors will vary depending on the specific circumstances of the market, these factors are:
  - The quality of the application
  - The diversity of news voices in the market
  - The likely impact of a new entrant or entrants
  - The competitive state of the market.<sup>1</sup>

### **Quality of the applications by Larche, Kirk and Bauman Roe**

10. The Commission generally assesses the quality of applications competing for licences to operate new radio programming undertakings by examining the following:
  - local programming proposals and plans for providing reflection of the local community;
  - Canadian content commitments;

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<sup>1</sup> The relevance of these four factors was highlighted by the Commission in *Introductory statement – Licensing new radio stations* which appeared in Decisions CRTC 99-480, 99-481 and 99-482, all dated 28 October 1999.

- quality of the business plan, including the proposed station format; and
- commitments in support of the development of Canadian talent.<sup>2</sup>

*Local programming and local reflection*

11. In its application, Larche indicated that it would broadcast more than 4 hours of news each week, including every half-hour in the mornings and at selected hours during the day and on weekends. Larche indicated that its proposed station would be staffed separately from its Midland station, and the news would be targeted to the Kitchener-Waterloo audience aged 25-54. The applicant also stated that it would produce 7 hours and 32 minutes of spoken word programming each week, including programs such as *Focus on Kitchener*, reports on recreational activities, vignettes promoting Canadian artists and public service announcements.
12. Kirk stated that it would reflect the needs of the local market by broadcasting 4 hours and 10 minutes per week of local news of importance and interest. The applicant indicated that its news would be locally based, with resources focused on local stories first. Kirk also stated that it would promote local and community events throughout the Kitchener-Waterloo area year-round.
13. In its application, Bauman/Roe stated that between 85% and 90% of all programming on the proposed station would be locally produced. At the hearing, the applicant reiterated its commitment that spoken word programming would consist of news and information spread throughout the broadcast day. A daily 30-minute midday news program was proposed as the centrepiece of the Bauman/Roe spoken word programming.
14. The Commission considers that Larche, Kirk and Bauman/Roe all presented solid plans for the reflection of the local needs of the Kitchener-Waterloo audience to be served.

*Canadian content*

15. Section 2.2 of the *Radio Regulations, 1986* (the Radio Regulations) requires that on a weekly basis, a minimum of 35% of all category 2 musical selections, and a minimum of 10% of all category 3 musical selections broadcast be Canadian selections. The Bauman/Roe application indicated that the proposed station would adhere to the level set by the Radio Regulations. As part of their applications, however, both Larche and Kirk made a commitment to ensure that at least 40% of all Category 2 musical selections broadcast would be Canadian.
16. The Commission notes that the Larche and Kirk proposals both exceed the regulatory minimum, and would provide greater exposure for Canadian music than would the Bauman/Roe proposal.

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<sup>2</sup> The relevance of these factors was highlighted by the Commission in *Introductory statement – Licensing new radio stations* which appeared in Decisions CRTC 99-480, 99-481 and 99-482, all dated 28 October 1999.

### *Business plans and formats*

17. Larche provided evidence of demand in the Kitchener-Waterloo market for its proposed station, estimating that, in its first year of operation, a new Country FM station would attract a 9% share of all tuning by listeners 12 years of age and over. The applicant indicated in its application that the country music format accounts for the largest overall tuning by Kitchener-Waterloo audiences to out-of-market stations, primarily CHAM Hamilton. Larche maintained that most of its proposed station's audience would come from repatriating Kitchener-Waterloo listeners from CHAM, and projected that it would be profitable by the third year.
18. In its application, Kirk presented evidence of demand for the country music format in the Kitchener-Waterloo area, suggesting that the proposed station would garner an 8% share of all hours tuned to radio by 18-64 year olds in that market by the second year of operation. Kirk also indicated that the bulk of tuning to the new station would come from the repatriation of listeners to out-of-market stations. Kirk projected that its proposed station would be profitable by the third year of operation.
19. Bauman/Roe predicted that its proposed country format station would be profitable from the first year of operation. The applicant indicated that the Kitchener-Waterloo area is an avid market for country music and anticipated that the proposed station would garner a 6% audience share from the outset, mainly through the repatriation of listeners to out-of-market radio stations.
20. The Commission considers that each of the three applicants has provided evidence of demand for their various proposals and has set out a satisfactory business plan based on the repatriation of audiences from out-of-market stations. The Commission has no doubt about their individual ability to launch an FM radio station in Kitchener-Waterloo.

### *Canadian talent development*

21. Under the Canadian talent development (CTD) funding plan instituted by the Canadian Association of Broadcasters (CAB), licensees adhering to the plan and serving markets the size of Kitchener-Waterloo are required to contribute a minimum of \$5,000 to CTD initiatives, through eligible third parties. The Larche and Bauman/Roe proposals each included initiatives in addition to contributions to the CAB plan, and the Kirk application contained CTD proposals that were independent of the CAB plan.
22. Larche proposed to spend a total of \$1,015,000 on CTD initiatives over a seven-year licence term, including the contribution specified under the CAB plan. The applicant proposed annual spending of \$145,000, which would consist of a \$45,000 donation to the Foundation to Assist Canadian Talent On Record (FACTOR), earmarked to support Ontario country music artists, \$40,000 to the CAB's "Starmaker Fund", \$30,000 to conduct seminars for aspiring artists at Conestoga Community College, \$20,000 annually to the Canadian Country Music Association (CCMA) for new artist development and \$10,000 for the CCMA to expand its website to allow for artist merchandising.

23. Kirk's plans for CTD focused on direct initiatives in the Kitchener-Waterloo market. Kirk proposed to spend \$25,000 annually on a "Birthday Bash" concert, \$20,000 on festival and event sponsorships by the new station, \$30,000 annually to the CCMA's "Country Talent Development Fund", \$10,000 annually each to a station-sponsored talent search and a station-sponsored "Roadshow" involving local performers, and \$5,000 each year for a seminar series, to provide expert information about the music business for the benefit of developing artists. Kirk's projected CTD commitments over a seven-year licence term amount to \$700,000.
24. Bauman/Roe indicated that it would participate in the CAB funding plan for CTD at the \$5,000 level set for Kitchener-Waterloo stations under the CAB plan. In addition to that commitment, the applicant proposed to spend \$25,000 on a talent search in the first year of operation, and to increase its talent search expenditure by 10% in each successive year. The costs of the talent search would include production of demonstration CDs for contestants, quarterly and annual concerts, and CD production for winners and exposure at the Country Radio Seminar in Nashville. The Bauman/Roe proposal represented a total commitment of \$284,000 over a seven-year licence term.
25. The Commission notes that all of the applicants' proposals exceeded the minimum requirements of the CTD funding plan instituted by the CAB. The Commission considers, however, that of the three proposals for new country music stations, Larche has proposed the most significant plan for the development of Canadian talent, and notes in particular that Larche's initiatives offer greater support for the production and promotion of Canadian music in general, and Ontario musicians in particular.

**Diversity of news voices, likely impact of a new entrant or entrants, and competitive state of the market**

26. None of the three applicants proposing a country station is currently licensed to operate a radio programming undertaking in the Kitchener-Waterloo market, nor does any of them own any other media outlet in the market. For this reason, any one of the proposals considered by the Commission would add to the diversity of news voices available to Kitchener-Waterloo audiences.
27. Excluding the radio stations licensed today, Kitchener-Waterloo is served by three commercial licensees operating five radio stations, three campus/community radio stations and a local television station CKCO-TV that is owned by CTV. In light of the above, the Commission considers that the Kitchener-Waterloo market is served by a variety of news voices.
28. Taking into account all of the applicants' plans for the repatriation of out-of-market tuning, the growth in radio advertising revenue in the Kitchener-Waterloo market over the five years ending in 2002, and the comparatively high level of profitability of that market, the Commission is confident that a new country music format FM radio station could be licensed to operate in Kitchener-Waterloo without causing significant financial harm to any existing broadcasters in the market.

29. Given that none of these three applicants are currently operating in the Kitchener-Waterloo market, the Commission is satisfied that the entry of any one of the three would increase the level of competition in the Kitchener-Waterloo radio market.

### **Assessment of the Trust application**

30. As noted above, the Trust proposal requested the use of 99.5 MHz for an English-language commercial specialty FM station that would offer Christian music and religious programming.
31. Trust proposed to devote 80% of the broadcast week to local, station-produced programming. The remaining 20% of the week would feature syndicated countdown programs or new album specials. Spoken word programming would include regularly scheduled newscasts, public service announcements, three weekly church services broadcast on Sundays, as well as coverage of local events and interviews with local community members and organizations.
32. At the hearing, the applicant was asked how it would provide balance in its programming. Trust confirmed its understanding that, should it decide to provide religious spoken word programming, it would provide balance as called for in the *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993 (Public Notice 1993-78). Trust also confirmed that it would accept a condition of licence requiring adherence to the guidelines on ethics for religious programming set out in Public Notice 1993-78, regarding tolerance, integrity, social responsibility and the solicitation of funds.
33. In its application, Trust also set out plans to support CTD with annual contributions of \$5,000 for concerts, tour sponsorships and artist recordings, and presented evidence of demand in the Kitchener-Waterloo market for its proposed station.
34. The applicant predicted that the proposed station would derive its revenue mostly from listener donations and non-traditional advertising. Trust noted that Christian-related businesses and ministries are generally small and unable to afford advertising on mainstream radio stations. It maintained that the proposed station would provide this group with new opportunities to advertise. The applicant anticipated that it would generate local advertising sales of \$160,000 in the first year of operation, increasing to \$318,000 by the seventh year.
35. The Commission is satisfied that the applicant's CTD plans and local spoken word proposals would be adequate to meet the needs of a niche audience in Kitchener-Waterloo, and that Trust has presented a satisfactory business plan. The Commission is further satisfied that the applicant's proposed service would have a minimal impact on the Kitchener-Waterloo radio market, and would not alter the competitive balance of that market.

36. Overall, the Commission is satisfied with the applicant's business plan and considers that Trust was able to demonstrate that a demand exists for the type of service proposed. As mentioned earlier, however, Trust's request for the use of the same frequency as that proposed by Larche, Kirk and Bauman/Roe made the applications technically mutually exclusive.

### **Conclusions**

37. As noted in *Introduction to Broadcasting Decisions CRTC 2003-152 to 2003-155 - Licensing of new FM radio stations to serve Kitchener-Waterloo*, Broadcasting Public Notice CRTC 2003-25, 14 May 2003, the Commission is satisfied that the Kitchener-Waterloo market can support the licensing of two new commercial FM radio stations, including one featuring CHR, Urban Top 40 or Rhythmic CHR music and one operating in a Country or New Country music format. The Commission is also satisfied that, based solely on potential competitive impact, there would be no impediment to the licensing of all three proposals for not-for-profit FM stations (including the Trust application, considered herein).
38. As noted above, based solely on the slight potential for competitive impact the proposed service would have on the Kitchener-Waterloo radio market, there would be no impediment to licensing the proposal by Trust. However, that application for the use of the frequency 99.5 MHz was technically mutually exclusive with the applications by Larche, Kirk and Bauman/Roe.
39. The Commission is of the view that the best use of the frequency 99.5 MHz in Kitchener-Waterloo is for the operation of a mainstream commercial radio station that will provide service to a broad cross-section of residents in this area, rather than for a niche audience.
40. The Commission concludes that, of the three applications for the use of the frequency 99.5 MHz to establish a country FM radio station in Kitchener-Waterloo, the best proposal is the one submitted by Larche, based on the level and nature of the applicant's CTD commitments, as well as its approach to local reflection and Larche's broadcast experience.
41. The Commission therefore **approves** the application by Larche for a licence to operate a new English-language FM radio programming undertaking serving Kitchener-Waterloo. The station will operate at 99.5 MHz (channel 258A) with an effective radiated power of 1,600 watts. The applications by Kirk, Bauman/Roe and Trust are consequently **denied**.

### **Issuance of the licence**

42. The licence will expire 31 August 2009. It will be subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, as well as to the conditions set out in the appendix to this decision.



43. 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.
44. 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.
45. 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 14 May 2005. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this date.

#### **Matters regarding CFWC-FM Brantford**

46. As noted in Public Notice 2003-25, an application by Anthony Schleifer, on behalf of 14863781 Ontario Ltd. had been placed on the agenda of the 28 October Public Hearing in Kitchener. The numbered company is the licensee of the low-power unprotected radio station CFWC-FM Brantford. In *New Christian music FM radio station*, Decision CRTC 2001-642, 11 October 2001, 14863781 Ontario Ltd. was authorized to carry on an English-language specialty FM station on the frequency 99.5 MHz (channel 258LP), with an effective radiated power of 50 watts.
47. The application by Anthony Schleifer proposed to increase the effective radiated power of CFWC-FM to 250 watts, in order to acquire a protected status, eliminating the possibility of the station's current frequency of 99.5 MHz being assigned to one of the applicants proposing to operate a higher power "regular class" commercial station in Kitchener-Waterloo.
48. The Commission expects Larche to adhere to its commitment, also tendered by the other applicants at the hearing proposing the use of 99.5 MHz, to absorb the costs of moving the low-power, unprotected station CFWC-FM Brantford to another frequency. These commitments prompted Mr. Schleifer to withdraw his application to amend the licence for CFWC-FM.

#### **Cultural diversity**

49. In *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998, the Commission encouraged all radio broadcasters to reflect the cultural diversity of Canada.

50. In interventions to a number of the applications for new radio programming undertakings heard at the Kitchener hearing, the Communications and Diversity Network of the Pearson-Shoyama Institute outlined its concerns about the promotion of diversity in radio broadcasting, and made suggestions for the evaluation of a licensee's performance in the five areas of programming, employment practices, news, music and promotion of Canadian artists. As part of this proceeding, Larche and all other applicants were given the opportunity to describe the measures they would take to incorporate and reflect the reality of Canada's cultural, ethnic, racial and Aboriginal diversity in each of these five areas.
51. In response, Larche stated that it planned to produce a program to be titled *Focus on Kitchener*, which would reflect the cultural diversity of the region by covering events and a calendar of events in the area. The applicant also indicated that it has a special interest in hiring Aboriginal employees, and is committed to creating summer employment for an Aboriginal person pursuing a career in broadcasting.
52. The Commission notes these commitments and encourages the applicant to promote Canada's cultural diversity through both the programming and hiring practices of the new station.

### **Employment equity**

53. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the applicant 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 at the following Internet site: <http://www.crtc.gc.ca>*

## Appendix to Broadcasting Decision CRTC 2003-153

### Conditions of licence

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, as well as the following conditions of licence:

1. In each year of the licence term, the licensee shall contribute \$145,000 to specific direct Canadian talent development initiatives. These annual contributions shall include \$45,000 to the Foundation to Assist Canadian Talent on Record (FACTOR), earmarked to support Ontario country music artists, \$40,000 to the Canadian Association of Broadcasters' Starmaker Fund, \$20,000 to the Canadian Country Music Association (CCMA) for new artist development, \$10,000 to the CCMA to expand its website to allow for artist merchandising, and \$30,000 to Conestoga Community College to conduct seminars for aspiring artists.
2. The licensee shall, in lieu of the requirements set out in subsection 2.2(8) of the *Radio Regulations, 1986* and subject to subsection 2.2(6) of those regulations, devote, in a broadcast week, 40% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

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