

2014 12 01

To: Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Subject: Part 1 Application – Corus Premium Television Ltd. (Corus) – 2014-1106-6 – Intervention by Bell Media

Dear Mr. Traversy,

1. Bell Media is pleased to provide this intervention relating to the above-noted Part 1 application. Corus is seeking to amend the broadcasting licence for its AM radio station CKNW Vancouver operating at 980 AM in order to add an FM rebroadcasting transmitter operating at 99.7 MHz.

2. As outlined in their application, Corus states the addition of its proposed FM transmitter would not represent a new service as the FM transmitter would rebroadcast the programming of CKNW within its existing contours. Consequently, Corus believes that its application is compliant with the Commission's Common Ownership Policy (the Policy). Alternatively, if the Commission considers the proposed FM transmitter does contravene the Policy, then Corus has requested an exception to the Policy.

3. For the reasons outlined below, we oppose Corus' application and requests that the Commission deny the application:

- The technical issues impacting CKNW are not unique to the station as all urban AM stations suffer from similar problems;
- The addition of an FM rebroadcasting transmitter violates the Policy;
- An exception is not warranted; and
- Current precedents do not apply.

4. Each of these reasons is explained in detail below.

CKNW's Reception Issues Are Not Unique

5. Corus has indicated that the purpose of adding the FM transmitter is to correct coverage deficiencies in downtown Vancouver. In support of their application, they have provided evidence that CKNW's signal in the downtown core is impaired. To remedy these reception issues, Corus has proposed adding a FM transmitter, a so-called "nested FM" in order to improve CKNW's signal. We note that the addition of a nested FM is an uncommon solution to fix signal impairments and consequently, each application must be assessed on its own merits.

6. We acknowledge that CKNW suffers from signal impairment but it must be recognized that this is not a unique phenomenon to CKNW, but rather it represents an ordinary experience for urban AM stations. In particular, all AM stations in all urban markets suffer from poor quality signals due to lack of building penetration by the signal as well as interference from a variety of electrical sources.

7. In Vancouver, as Corus has noted, the challenge is the densely built downtown core with condominiums, business towers, and hotels. Compounding the structural challenges presented by these buildings is the dramatic effect that mass transit trolley lines have on the ability to receive AM signals. But the difficulty from both of these obstacles is felt by all competitive AM frequencies in the very core of downtown Vancouver and not just CKNW. Key formats such as news and traffic updates on CKWX (New 1130 owned by Rogers); sports programming on CKST and CFTE (TSN 1040 and TSN 1410, owned by Bell Media); Asian ethnic and cultural programming on CHMB (AM 1320 owned by Mainstream Broadcasting); or in CKNW's case, news and information programming on AM 980. All of these signals face varying degrees of impairment in the downtown core. Yet CKNW is better positioned than many AM stations in Vancouver to reach its listeners given that it operates at the lower end of the AM band on 980 kHz. Such frequencies at the lower end of the AM band typically have better penetration throughout downtown areas.

8. The current environment means that the playing field is neutral and no operator has an unfair advantage over the others. We all have apps for smartphones that allow our listeners to tune into their station of choice on their phone, be it in their cars or otherwise. We all push office tuning via our website streams. Both of these avenues provide significant opportunities to listen to stations by mitigating the technical barriers that we are unable to change.

9. Allowing CKNW an opportunity to nest an FM on a frequency that only they can operate on, while having no alternative for the other stations to access would inflict a severe handicap to all stations except for the one allowed to be nested on FM.¹ No other broadcaster has this same opportunity due to the channel alignment in the market. There are other frequencies but any of these other options would require the elimination or change of low power operations, or acceptance of interference by other broadcasters in outlying markets. Given this, and as detailed below, we believe that the Commission should examine the situation facing AM stations with a view to providing a comprehensive policy framework that reflects the current challenges facing these stations.

10. Furthermore, CKNW is an extremely successful radio station as demonstrated both by the chart below and by Corus' own acknowledgement that their application is not filed on the basis of financial need. According to Numeris, CKNW is the dominant AM station in the Vancouver market with a 9.6 share of tuning 12+ in Fall 2014, an increase over the same time period in the previous year. CKNW also enjoys the second largest share of tuning amongst all radio stations in Vancouver. Therefore, the AM signal of CKNW is clearly not impacting the station's performance in Vancouver.

¹ Corus is proposing to use 99.7 MHz, a second adjacency to their station, CFOX-FM, which operates at 99.3 MHz. As indicated in their supplementary brief, this frequency is not available for use by any other broadcaster without Corus' permission, which they would not provide in any event.

		Audiences	A12+				
		Stats	Total Market Share %				
Dayparts	Areas	Stations	FALL 13	WIN 14	SPR 14	SUM 14	FALL 14
AW (Mo-Su 2a-2a)	Vancouver CTRL	CHQMFM	11	12.6	9.5	10.7	10.6
		CKNW	9.1	8.3	9	9.7	9.6
		CFBTFM	7.1	7.5	7.8	7.4	7.5
		CJJRFM	6.8	7.2	7.3	6.7	7.3
		CKWX	6.4	5.6	5.9	6.2	7.2
		CFMIFM	6.4	6.1	6	7.7	6.1
		CJAXFM	5.9	5.4	5.8	6.7	5.9
		CKZZFM	6.4	6.1	5.8	4.5	4.8
		CKPKFM	2.7	3.2	3.3	4.1	4.3
		CFOXFM	3.6	2.9	3.1	3.9	4.1
		CFUNFM	3	3.3	3.5	4	3.8
		CHLGFM	1.5	1.4	1.5	2	2.6
		CKST	2.8	2.9	2.7	1.6	2
		CISL	3.4	2	2.4	2.1	1.8
		KWPZFM	0.9	1	1	1	1.2
		CHMJ	0.9	0.8	0.7	0.7	0.9
		CFTE	0.4	0.3	0.3	0.5	0.2

Corus' Proposed FM Transmitter Violates the Common Ownership Policy

^{11.} The Policy states that, in markets with eight commercial radio stations or more, operating in a particular language, a person may be permitted to own or control as many as two AM stations and two FM stations in that language. In Vancouver, Corus currently owns and operates two FM stations in Vancouver, CFOX-FM and CFMI-FM. With the proposed addition of a FM transmitter to rebroadcast the programming of CKNW, Corus would have three FM stations in Vancouver, in clear violation of the Policy.

^{12.} The Commission examined this identical issue in Broadcasting Decision CRTC 2007-350 (BD 2007-350) and Broadcasting Decision CRTC 2012-307 (BD 2012-307), where Corus had applied for FM rebroadcasting transmitters for CJOB Winnipeg and CHQR-FM Calgary respectively. In that decision, the Commission denied Corus' application and similarly, the Commission should deny Corus' current application for CKNW.

An Exception to the Policy is not warranted

^{13.} If the Commission determines that the proposed FM transmitter does constitute a third FM station, we submit that an exception to the Policy is not justified. In Broadcasting Information Bulletin CRTC 2010-341 (BIB 2010-341), the Commission set out its *Revised guidelines for the application of the Common Ownership Policy for Radio*. In BIB 2010-341, the

Commission noted that rare exceptions to the Policy have been granted where, due to adverse economic circumstances, the survival of radio stations has been in serious doubt. The Commission has also stated that exceptions may be permitted to address severe technical limitations.²

^{14.} Bell Media submits that CKNW is neither experiencing adverse economic circumstances such that its survival is in doubt, nor is it experiencing severe technical limitations. Corus did not provide any financial justification for its proposed nested FM, nor are CKNW's technical limitations severe as all urban AM radio stations experience identical issues to those identified by Corus. In this regard, the Commission's statement in BD 2012-307 is relevant:

The Commission acknowledges that the technical issues experienced by CHQR are legitimate. However, the Commission notes that CHQR is not subject to any more interference than other AM stations operating in major urban centers. The Commission is of the view that CHQR's technical limitations do not qualify as severe given that these technical issues are inherent to the operation of all AM stations in major urban markets. Accordingly, the Commission finds that Corus' situation does not meet the severe technical limitations criterion for an exception to the Common Ownership Policy.³

Current precedents are not applicable

^{15.} We recognize that the Commission has granted exceptions to the Policy but we submit that the circumstances that led to the approvals do not exist in the current application.

^{16.} In Broadcasting Decision CRTC 2010-942, *Transfer of effective control of various commercial radio programming undertakings from Corus Entertainment Inc. to Cogeco inc.* (Cogeco) (BD 2010-942), the Commission departed from the Policy and granted Cogeco's request for an exception in the Montreal market. In its approval, the Commission clarified that its decision was based on the unique circumstances of the French-language radio market and the need to preserve diversity of voices in Montreal. Such unique circumstances included the following:

- the significant migration of French-language listeners to English-language stations, a reality in the Montreal radio market;
- the requirement under section 5(2) of the *Broadcasting Act* (the *Act*) that the Canadian broadcasting system should be regulated and supervised in a flexible manner that is readily adaptable to the different characteristics of English- and French-language broadcasting and to the different conditions under which broadcasting undertakings that provide English- or French-language programming operate, taking into account regional needs and concerns;
- the policy objective enunciated in section 3(1)(c) of the *Act*, which recognizes that English- and French-language broadcasting, while sharing certain common aspects, operate under different conditions and may have different requirements;
- the difference between English-language markets, where the vast majority of predominantly spoken word stations operate on the AM band and post sound financial results and French-language markets which are experiencing an exodus from the AM band; and
- that approving Cogeco's request would enhance the competitiveness of French-language private radio stations not only in Montreal but across the province of Quebec.⁴

² BIB 2010-340, paragraph 6.

³ BD 2012-307, paragraph 30.

⁴ BD 2010-942, paragraphs 64, 67 to 69 and 73.

^{17.} More recently, in Broadcasting Decision CRTC 2013-310, *Astral broadcasting undertakings – Change of effective control* (BD 2013-310), the Commission approved Bell's application for an exception to the Policy in Montreal. This resulted in Bell Media being permitted to operate CKGM, along with CJAD, CHOM-FM and CJFM-FM. In its decision, the Commission expressed concern about the loss of an English-language station and agreed with Bell that it was in the public interest for Montreal's minority-language English-language community to continue to receive a sports talk radio service from CKGM. In granting the exception, the Commission specifically identified that CKGM's unique programming contributed to the diversity of programming in Montreal and that approval would maintain an English-language radio offering for the community.⁵

^{18.} In both BD 2010-942 and BD 2013-310, the Commission departed from its Policy solely based on the characteristics of either the French- and English-language radio markets in Montreal, as the case may be. Such unique majority/minority language characteristics do not exist in the Vancouver market nor anything akin to it. In fact, the Vancouver market is much more similar to the Winnipeg and Calgary markets in respect of which the Commission concluded in BD 2007-350 and BD 2012-307 in comparable circumstances that no exception to the Policy was warranted. Moreover, unlike CKGM which offers unique programming in Montreal, CKNW's programming is not unique in Vancouver. CKNW is a news talk station with news, traffic reports, sports updates that are replicated in part by the all news station News 1130 and by CBC Radio One; and sports which is replicated by TSN 1040 and TSN 1410.

Conclusion

^{19.} In light of the above, we respectfully request that the Commission deny Corus' application to amend the broadcasting licence for its AM radio station CKNW Vancouver in order to add an FM rebroadcasting transmitter. We are opposed to the application for the following reasons:

- The technical issues impacting CKNW are not unique to the station as all urban AM stations suffer from similar problems;
- The addition of an FM rebroadcasting transmitter violates the Policy;
- An exception is not warranted; and
- Current precedents do not apply.

^{20.} In addition, in Broadcasting Notice of Consultation 2013-572, *Call for comments on a targeted review for the commercial radio sector*, the Canadian Association of Broadcasters (CAB), representing the majority of private radio broadcasters, submitted comments on a variety of issues, including proposed amendments to the Policy to allow for the transition of heritage AM stations to the FM band. However, the Commission declined to consider this issue, leaving the current Policy framework intact.

⁵ BD 2013-310, paragraph 112.

^{21.} Bell Media would like to thank the Commission for the opportunity to provide these comments. Should the Commission require any additional information, we would be pleased to provide it on request.

Yours truly,

[Original signed by K. Goldstein]

Kevin Goldstein

Vice President – Legal and Regulatory

c.c.: Sylvie Courtemanche, Corus

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