

**CITY OF HAMILTON
NOTICE OF MOTION**

Council Date: March 27, 2013

MOVED BY COUNCILLOR B. MCHATTIE.....

Comment to CRTC Consultations respecting the designation of a frequency for CBC radio service in the City of Hamilton

Whereas, Hamilton City Council has been working on obtaining a live CBC Radio station frequency since November 2005, and;

Whereas, Hamilton did receive a CBC digital station in 2010, and;

Whereas, the City of Kitchener recently received a live CBC Radio station, and;

Whereas, CBC Radio executives committed to moving the Hamilton digital service to live radio service as soon as was technically possible (i.e., when a frequency on the dial was available), and;

Whereas, BCE recently asked the CRTC to approve the acquisition of Astral Media, and;

Whereas, the CRTC rejected the takeover as it did not provide significant benefits to Canadians, and would serve to concentrate ownership of television and radio stations, and;

Whereas, Astral has now delivered a revised application to the CRTC which would include divestiture of several stations nationally, including two radio stations in Toronto, to be considered shortly by the CRTC.

Therefore be it Resolved:

That the Mayor be authorized and directed to forward the Comments, attached as Appendix "A", prepared by the Centre for Community Study on behalf of the City of Hamilton, to the Broadcasting Notice of Consultations CRTC 2013-106, requesting that the CTRC direct Astral/BCE to make available one frequency from within the Toronto and Hamilton regions to CBC in order to facilitate full radio service for the Hamilton region.

ON AIR

Comments related to Broadcasting Notice of Consultations CRTC 2013-106

From the Centre for Community Study
on behalf of the City of Hamilton

Introduction

1. Please accept this submission as comments from the Centre for Community Study (CCS) on behalf of the City of Hamilton related to application 2013-0244-7, by Astral Media Inc (Astral).
2. The applicant, Astral, is seeking approval from the CRTC for the transfer of ownership of its media properties across Canada to BCE Inc (BCE). Included in this transaction are three local radio stations in Hamilton, Ontario, and several more in the neighbouring Toronto market.

Background

3. In 2012, BCE Inc. asked the CRTC to approve the acquisition of Astral Media, owner of several media assets across Canada including a number of over-the-air radio stations in the Hamilton and Toronto broadcast markets. At the time, the CRTC rejected the takeover citing that,

The Commission is not convinced that the transaction would provide significant and unequivocal benefits to the Canadian broadcasting system and to Canadians sufficient to outweigh the concerns related to competition, ownership concentration in television and radio, vertical integration and the exercise of market power.¹

4. In January 2013, Astral submitted a revised application to the CRTC for consideration, and has amended its commitments to include the following elements:
 - The divestiture of several radio assets to address the issue of concentration of ownership.
 - Financial resources spent on English and French Canadian programming including benefits for radio.
 - Funding for consumer education, regulatory participation, media training and development.

The Hamilton Market

5. Although the Hamilton census metropolitan area (CMA) is the 9th largest region in Canada, the local media environment is not a diverse one. When compared to similarly sized cities like Winnipeg and Quebec City, Hamilton has far fewer local commercial radio stations. Hamilton has seven commercial radio stations, the majority owned by two companies, Corus or Astral.
6. One of the central reasons for the limited number of local radio options in the Hamilton market relates to the regions geographic proximity to the neighbouring Toronto and Buffalo markets. This has resulted in a highly congested and competitive frequency situation, where there are no viable frequencies available for use in the Hamilton region.

CBC Hamilton

7. Starting in 2005 and reiterated in subsequent communication, the City of Hamilton has formally called upon the federal government and the Canadian Broadcasting Corporation (CBC) to establish a local CBC presence commensurate to other Canadian communities of similar size, meaning a full-service radio station (see Appendix).
8. In 2010, the CBC announced an expansion plan as part of a larger national effort by the public broadcaster to fulfill its mandate to serve Canada's regions and Hamilton was included as a priority for investment.
9. However, in the Hamilton region, the CBC has encountered a persistent roadblock to providing radio service, which is a lack of available frequencies due to the community's proximity to Toronto, Canada's largest media market.
10. In 2012, as a first step towards providing Hamilton local service, the CBC launched an online digital service to provide some local content for the Hamilton region in the form of a dedicated website, along with staff and technical support as well as establishing an office in downtown Hamilton.
11. During the planning of the CBC digital Hamilton initiative, officials with the public broadcaster emphasized that the digital approach was just the initial phase of a plan to provide this region with commensurate service with other communities in the form of a full service radio station when an over-the-air frequency became available.²

12. The CBC has continued to demonstrate this commitment in other communities. For example, the CBC recently launched a new local radio station in the Waterloo region (March 2013). These efforts are part of a larger national plan of the public broadcaster's to fulfill its mandate to serve Canada's regions.

Public Benefit for Hamilton in the BCE-Astral Deal

13. With the proposed acquisition of Astral by BCE, the company has committed to divesting themselves of certain frequencies that currently cover the Toronto and Hamilton regions in compliance with the Commission's Common Ownership Policy. As such, there may be an opportunity for the CRTC to redirect one of these frequencies to provide Hamilton with a dedicated local CBC radio station.
14. In doing so, this would allow the public broadcaster to fulfill its commitment of service to the Hamilton region, it would allow Astral and BCE to demonstrate their commitment to the public interest and to encouraging a diversity of local media options for Canadians, and finally, it would ensure that the Hamilton region receives service from the public broadcaster commensurate in level with other communities.

Primacy of the Broadcasting Policy of Canada

15. The divestiture and assignment of a radio frequency for the CBC in Hamilton would be consistent with key elements of the Broadcasting Policy of Canada. Specifically, in section 3(1)(b), states that the Canadian broadcasting system "comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty."³ Also, the Policy states that the system should "encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values..."⁴
16. The principles established in the Policy are so essential that the Broadcasting Act specifies in two different sections that these objectives must be the first consideration in any CRTC decision. Specifically, in subsection 5(1)(3) of the Act, which outlines the Regulatory Policy governing the CRTC, it states that "the Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives of the regulatory policy set out in subsection (2)."⁵

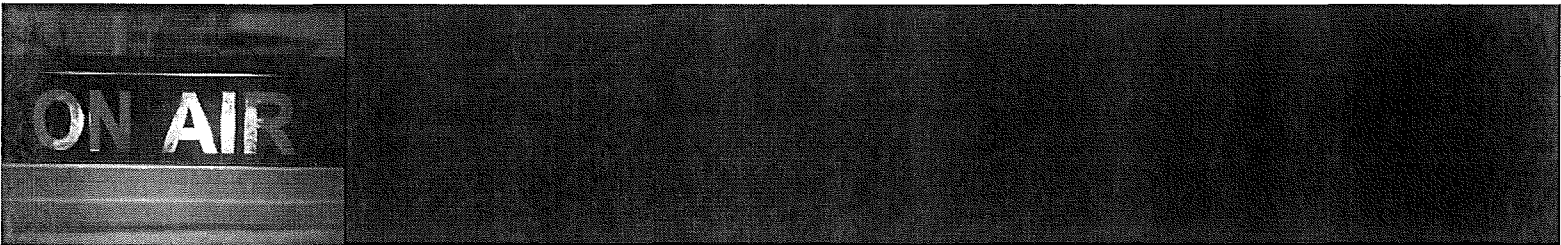
17. The second section of the Broadcasting Act where the primacy of the Broadcasting Policy is established in a subsection of the Policy itself dealing with the CBC. Subsection 3(1)(n) states that public interest and the objectives of the CBC, for example to "reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions"⁶, should take precedence in Commission deliberations.
18. The limited local media diversity in the Hamilton region presents a special need that the Commission should address. The Astral-BCE application presents the CRTC with a timely opportunity to address Hamilton's special needs by ensuring that the CBC has access to an appropriate frequency to serve this region in local programming.

CRTC Divestiture Precedents

19. The request for the divestiture of a media property in aid of greater diversity of voices in local markets is not unique. In fact, there have been a number of examples in recent ownership consolidation applications where the Commission has ruled that a broadcaster was required to sell off properties to address concerns about local concentration.
20. A notable example is that of CTVglobemedia Inc. (CTVgm) and CHUM Ltd. In Broadcasting Decision CRTC 2007-165, the Commission required CTVgm sell five City TV stations in Toronto, Edmonton, Winnipeg, Calgary and Vancouver. Again in 2004, the Commission ruled that CHUM Ltd. had to divest of Toronto One in its purchase of Craig Broadcasting Inc. In both these instances, the CRTC ruled that the applicants were contravening the CRTC policy and that "the proposed transaction would result in a concentration of ownership that would have an unacceptable impact on the plurality and diversity of voices in the English language market."⁷
21. Unlike the two examples cited above, the request presented here, for Astral-BCE to divest of a frequency for the use by the CBC, would be remedying a long-standing issue of lack of local media diversity in the Hamilton market.

Conclusions

22. Given all the valid and important concerns raised by the Commission in their rejection of the first proposal, the CCS and the City of Hamilton respectfully offers the following suggestion of a public benefit that could be included in the conditions for the approval of an Astral-BCE deal.
23. As part of the divestiture process that has clear precedent in previous CRTC decisions, the Commission should direct the proponent to make available one frequency from within the Toronto and Hamilton regions to the CBC in order to facilitate full radio service for the Hamilton region.
24. This action would be in line with the legislated principles established in the Broadcasting Policy of Canada, which is the primary document governing the Commission's actions. The Policy establishes the means by which the CRTC must place the public interest and the objectives of the national public broadcaster at the fore in its decisions. The CBC has articulated a commitment, as part of its mandate, to provide full radio service to the Hamilton region. The outstanding issue that limits this from occurring is the lack of a frequency available in this region. The Commission has, in recent decisions, required broadcasters to divest of media properties in the interest of ensuring a plurality and diversity of voices in Canadian communities. Therefore, the option presented here provides the Commission with a method to ensure greater public benefit from the Astral-BCE deal by remedying a long-standing deficiency on the Canadian media landscape in the Hamilton region.



Appendix

7.1

**CITY OF HAMILTON
MOTION**

Council Date: May 25, 2005

MOVED BY COUNCILLOR MCHATTIE.....

SECONDED BY COUNCILLOR.....

Local CBC Presence

WHEREAS Hamilton is the largest urban region in Canada without a local CBC presence, despite the continued contribution by Hamiltonians, through their taxes, to CBC's operating budget;

AND WHEREAS Hamilton was identified as a market for radio expansion in CBC's regional expansion strategy;

THEREFORE BE IT RESOLVED that the City of Hamilton call upon the federal government and the CBC to establish a local CBC presence commensurate to other Canadian communities of similar size.

Source: City of Hamilton⁸

References

¹ Canadian Radio-television and Telecommunication Commission. October 2012. Broadcasting Decision CRTC 2012-574. <http://www.crtc.gc.ca/eng/archive/2012/2012-574.htm>

² Meeting between CBC and City of Hamilton officials, November 3, 2011, Hamilton City Hall

³ Government of Canada. 1991. Broadcasting Act. Section 3(1)(d). <http://www.crtc.gc.ca/eng/LEGAL/BROAD.HTM>

⁴ Ibid.

⁵ Ibid. Subsection 5(3).

⁶ Ibid. subsection 3(1)(m)(ii).

⁷ Canadian Radio-television and Telecommunication Commission. June 2007. Broadcasting Decision CRTC 2007-165. prg. 23. <http://www.crtc.gc.ca/archive/ENG/Decisions/2007/db2007-165.htm>.

⁸ City of Hamilton Council Motion, <http://www.hamilton.ca/Hamilton.Portal/Inc/PortalPDFs/ClerkPDFs/council/2005/May25/Item%207.1.pdf>