



May 13, 2004

Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

Ms. Diane Rhéaume
Secretary-General
Canadian Radio-television and
Telecommunications Commission
1, Promenade du Portage
Hull, Québec
K1A 0N2

Dear Ms. Rhéaume:


**Re: Broadcasting Notice of Public Hearing CRTC 2004 – 3
Application No. 2003-1459-2 Wesley Shaw**

1. The Canadian Association of Broadcasters (CAB) – the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private television and radio stations, networks and specialty, pay and pay-per-view televisions services – is pleased to submit this intervention to the above-noted application.
2. Wesley Shaw (Shaw) has applied for a licence to operate an English-language low-power FM commercial radio programming undertaking in Whistler, British Columbia. The new station would operate on frequency 101.5 MHz (channel 268LP) with a maximum effective radiated power of 27.15 watts. The applicant proposes a Pop, Rock and Dance music format.
3. The CAB notes that the Whistler market is already served by a number of full power FM stations some of which, by condition of licence, provide station-produced local programming from broadcast studios located in the Whistler community.
4. The CAB **opposes the above-noted application** for the following reasons:
 - Shaw's application does not meet the objectives identified in the licensing policy for low-power radio undertakings outlined in Broadcasting Public Notice CRTC 2002-61 *Policy Framework for Community-based Media* (PN 2002-61);

- Shaw has failed to provide substantial evidence that demonstrates relevant community need for an additional service in the Whistler market; and
 - Shaw's proposed service is commercial in nature, offering a mainstream music format under the form of a low power radio undertaking, and should therefore trigger a call for applications in the Whistler market.
5. As the CAB noted in its submission to the Commission respecting Public Notice CRTC 2001-19 *Review of Community Channel Policy and Low-Power Radio Broadcasting Policy*, low-power radio undertakings have emerged in numerous markets over the past several years.
 6. It is the CAB's position that low-power radio undertakings should provide niche-focused services that provide true diversity of voices in the broadcasting system, for example tourist information, ethnic or other services of direct and local relevance. Such services complement rather than compete with existing radio services in the market. Low-power radio services must not represent a new, low-cost competitive layer with few obligations for licensees and a lower threshold to market entry.
 7. In PN 2002-61, the Commission clearly states as a fundamental element of its licensing policy for low-power radio that "[l]ow-power radio undertakings should not replicate the programming offered by existing services." Accordingly, the Commission's licensing policy requires all applicants for low-power radio services to demonstrate how their proposed service will fulfill the following objectives:
 - The contribution of an additional, diverse voice to the markets served.
 - The presentation of programming that complements that of existing licensees in the market.
 - The fulfillment of demonstrated community needs.
 8. The CAB submits that Shaw's application has failed to demonstrate how its proposed service will meet any of the above-noted licensing objectives. Contrary to offering a diverse voice in the market, Shaw's proposed commercial service plans to offer a Pop, Rock and Dance music format, which is traditionally provided by mainstream conventional radio stations.
 9. Furthermore, Shaw's application fails to provide any substantial or objective evidence that demonstrates there is a relevant community need for its proposed service or any additional service in the Whistler market.

10. The nature of the above-noted application underscores the CAB's serious concern that the Commission's licensing policy for low-power radio will be used as a "back door" entry into the system for applicants wishing to operate conventional radio undertakings but not willing to shoulder the regulatory obligations that accompany such a licence. In reviewing Shaw's application the Commission must not underestimate the significant impact that the introduction of new, ostensibly "non-competitive" services can have on existing licensed radio undertakings, particularly in smaller markets where licensed local services are under constant pressure from all media sources.
11. For these reasons, the CAB urges the Commission to deny the application by Shaw for a low power FM commercial radio station in Whistler, British Columbia.
12. The CAB further submits that, should the Commission determine in the context of the current public hearing that the Whistler market can sustain an additional competitive commercial service, and that there is a demonstrated need for such a service, an appropriate call for applications to provide such a service should be issued.
13. The CAB does not wish to appear at the June 7th, 2004 hearing in Gatineau, Quebec.

Yours truly,

A handwritten signature in black ink, appearing to read 'Glenn O'Farrell', with a stylized, cursive script.

Glenn O'Farrell
President and CEO

cc: Wesley Shaw, wes@wildinwhistler.com
Marc O'Sullivan, CRTC