



Broadcasting Decision CRTC 2016-258

PDF version

Reference: 2016-64

Ottawa, 8 July 2016

Durham Radio Inc.
Haldimand County, Ontario

*Applications 2015-1355-7, 2015-1337-5 and 2015-1335-9, received 5 December 2015
Public hearing in the National Capital Region
16 May 2016*

CKJN-FM Haldimand County – Acquisition of assets, licence amendment and technical changes

*The Commission **approves** an application by Durham Radio Inc. (Durham) for authority to acquire from Vista Radio Ltd. the assets of the English-language commercial radio station CKJN-FM Haldimand County, Ontario, and for a broadcasting licence to continue the operation of the station.*

This transaction will benefit Haldimand County by providing programming that is more focused on the community and by securing the station's long-term viability. According to Durham's proposal, \$50,000 over the next five years will flow primarily to local artists' initiatives. Accordingly, it serves the public interest and furthers the objectives for the Canadian broadcasting system set out in the Broadcasting Act.

*The Commission also **approves**, in part, Durham's application to reduce the amount of Canadian selections that CKJN-FM must broadcast. As such, CKJN-FM must now devote 40% or more of its musical selections from content category 2 (Popular music) to Canadian selections broadcast in their entirety during each broadcast week and between 6 a.m. and 6 p.m. in the period from Monday to Friday of the same broadcast week.*

*Finally, the Commission **approves** Durham's application to change CKJN-FM's authorized contours.*

Background

1. In Broadcasting Decision 2005-169, the Commission approved an application by Bel-Roc Communications Inc. (Bel-Roc) to operate an English-language commercial FM radio station in Haldimand County (now operating as CKJN-FM). As part of its application, Bel-Roc made a commitment—which was imposed by condition of licence—that at least 60% of all content category 2 (Popular music) musical selections broadcast would be Canadian.

2. Prior to the launch of the station, in Broadcasting Public Notice 2007-60, the Commission approved a transfer of shares resulting in a change in ownership and effective control of Bel-Roc to The Haliburton Broadcasting Group Inc. (Haliburton).
3. Subsequently, in Broadcasting Decision 2009-558, the Commission denied an application by Haliburton to reduce the minimum percentage of musical selections from category 2 that must be devoted to Canadian selections throughout the broadcast week and between 6 a.m. and 6 p.m. Monday to Friday from 60% to 35%. The Commission indicated that allowing CKJN-FM to reduce its contributions to Canadian content during its first licence term and after only two years of operation would bring into question the integrity of the Commission's licensing process.
4. Finally, in Broadcasting Decision 2012-577, the Commission approved an application by Vista Radio Ltd. (Vista) to acquire from Haliburton the assets of various AM and FM radio stations, including CKJN-FM.

Applications

5. Durham Radio Inc. (Durham) filed an application (2015-1355-7) for authority to acquire from Vista the assets of CKJN-FM and for a broadcasting licence to continue the operation of the station.
6. Durham is owned by Douglas E. Kirk (82.6%), Mary L. Kirk (10.9%) and other shareholders (6.5%), and is controlled by Douglas E. Kirk, a Canadian within the meaning of the *Direction to the CRTC (Ineligibility of Non-Canadians)*. Following completion of the transaction, Durham would become the licensee of CKJN-FM.
7. The applicant requested an exception to the payment of tangible benefits as directed in the Commission's tangible benefits policy (the Policy),¹ proposing instead an over-and-above annual contribution of \$10,000 over five years (for a total of \$50,000) to Canadian content development (CCD).
8. Durham also filed an application (2015-1337-5) to reduce from 60% to 35% the amount of Canadian selections from category 2 that CKJN-FM must broadcast during each broadcast week and between 6 a.m. and 6 p.m. Monday to Friday in the same broadcast week. The purchase of the station is not conditional upon approval of this amendment.
9. Finally, Durham filed an application (2015-1335-9) to change the authorized contours of CKJN-FM to improve the station's service to Haldimand County. The purchase of the station is not conditional upon approval of this amendment.
10. The Commission received interventions in support of these applications.

¹ The Commission's tangible benefits policy is set out in Broadcasting Regulatory Policy 2014-459.

Regulatory framework

11. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act* (the Act). Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, that the benefits of the transaction are commensurate with the size and nature of the transaction and that the application represents the best possible proposal under the circumstances.
12. The Commission must consider each application on its merits, based on the circumstances specific to the application. In addition, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest as expressed in the objectives set out in section 3(1) of the Act.

Issues

13. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
 - whether the proposed transaction is in the public interest;
 - whether a reduction to CKJN-FM's minimum levels of Canadian musical selections is appropriate; and
 - whether the requested technical changes are appropriate.

Public interest

14. The public interest is reflected in the numerous objectives of the Act, including the Canadian broadcasting policy set out in section 3(1) of the Act. In the context of this transaction, the Commission has paid particular attention to the following objectives of the Canadian broadcasting policy set out in section 3(1)(i):

the programming provided by the Canadian broadcasting system should

- be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,
- be drawn from local, regional, national and international sources,
- provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.

The viability of CKJN-FM

15. CKJN-FM is currently the only local radio station serving Haldimand County, a rural municipality situated on the north shore of Lake Erie and south of Hamilton. Haldimand County has a population of approximately 45,000 people and receives signals from various markets such as Toronto, Kitchener, Waterloo and Hamilton, and from the United States.

16. In support of its proposal, Durham cited its experience in Southern Ontario and indicated that it has a plan to implement the changes needed to provide Haldimand County with an increased local focus that addresses the needs of the communities. Specifically, Durham proposed to set up a “Community Initiative” (live interview opportunities, online listings, regularly scheduled on-air announcements and on-site station visits) that would promote information sharing and a sense of community. It also plans to establish a respectful relationship with the community by hiring local staff, providing access and support on-air and online to promote community news and information, attending events on weekends and broadcasting from these events.
17. Further, the applicant indicated that CKJN-FM would benefit from operational efficiencies, particularly with its station CHKX-FM Hamilton, in the form of office resources, production and technical support.
18. The Commission considers that Durham’s strong local focus and experience in operating stations in Ajax and Hamilton—which face similar challenges as CKJN-FM in competing with multiple signals originating from large neighbouring markets—position it well for success in overcoming the challenges that it would face in operating CKJN-FM. Further, CKJN-FM would benefit from Durham’s considerable experience and knowledge of the market conditions in and around Haldimand County, and from operational efficiencies.

The CCD proposal

19. In the Policy, the Commission stipulated that for commercial radio undertakings, tangible benefits must generally represent at least 6% of the value of the transaction and be allocated as follows:
 - 3% to the Radio Starmaker Fund and Fonds Radiostar;
 - 1.5% to FACTOR or MUSICACTION;
 - 1%, at the discretion of the purchaser, to any eligible CCD initiative; and
 - 0.5% to the Community Radio Fund of Canada.
20. The applicant proposed a value for this transaction of \$594,458. According to the Policy, at least 6% of that amount, representing a minimum of \$35,667, would be imposed in tangible benefits.
21. The Policy also stipulates that there may be cases where the Commission finds that the public interest is fully met without tangible benefits. Requests for an exception should meet all of the following criteria:
 - the undertaking to be acquired is not in its first licence term;
 - the undertaking has suffered significant financial losses over an extended period of time (that is, for at least five consecutive years following the first licence term); and

- the purchaser demonstrates that there is a public interest either for the broadcasting system as a whole or the community served in maintaining the failing undertaking.
22. Given that CKJN-FM is in the fourth year of its second licence term (the licence expires 31 August 2017), has reported losses every year since launching and is the only local radio station serving Haldimand County, the Commission considers an exception to the requirement to pay tangible benefits to be appropriate in this case.
 23. Durham nonetheless proposed to commit to an over-and-above CCD package of \$50,000 to be distributed over 5 years as an alternative to tangible benefits, which would be directed primarily to funding and promoting local artists' initiatives, such as the CiderFest Country Music Concert, BBQ & Cider Festival. The applicant also committed to directing 20% (or \$10,000) of the proposed \$50,000 package to FACTOR. In Durham's view, its proposal would help the station to reconnect with the community.
 24. Given the foregoing, the Commission finds that Durham's CCD proposal is in the public interest. A **condition of licence** reflecting the proposal is set out in the appendix to this decision.

Reduction in Canadian content levels

25. In support of its proposed reduction in Canadian content levels, the applicant indicated that the station has struggled with listenership partly due to high Canadian content levels, which have resulted in a lack of income. Durham claimed that the initial 60% commitment by the original applicant, Bel-Roc, was overly ambitious. The station continued to operate with this commitment well into its second licence term. According to Durham, approval of its request to operate at Canadian content levels of 35%, which are the minimum requirements set out in the Regulations, would allow the station to compete on an even footing with signals entering Haldimand County.
26. CKJN-FM currently operates in a very competitive market where over 95% of all radio listenership comes from out-of-market tuning (approximately 9.3% of the out-of-market tuning originates from the U.S).² Further, CKJN-FM has not reported a single year of profitability since its launch in 2007, even after various changes in ownership, branding and format.
27. The Commission is of the view that the current Canadian content levels combined with other contingent factors (such as lack of programs appealing to local listeners, inability to attract advertisers and out-of-market tuning) could have contributed to the station's underperformance.
28. The Commission is generally not inclined to remove conditions of licence relating to the broadcast of higher-than-regulated Canadian content levels for English-language commercial radio stations due to the importance of the value given to such commitments in the Commission's determination to grant a licence to an applicant in a competitive process. However, the Commission acknowledges that the 60% Canadian content level requirement is high and could represent a challenge in terms of music programming flexibility.

² Numeris Radio Fall 2015

29. In light of this, the applicant was asked to comment on reducing its Canadian content levels to 40%. Durham responded that any requirement to commit to a quota above the minimum threshold would compromise CKJN-FM's ability to fulfil its mandate to attract and serve the residents of the licensed area. Durham further stated that all other Canadian stations that reach the Haldimand market operate with a 35% Canadian content level requirement and that the U.S. stations that reach this area have no such requirement.
30. The Commission considers that Canadian content levels of 40% would afford the station greater programming flexibility by allowing a greater range of music choice. CKJN-FM would not be required to broadcast the high levels of Canadian musical selections initially imposed, while the reduced levels would remain above the regulated minimum, which would serve to maintain the integrity of the original licencing process.
31. Accordingly, the Commission finds it appropriate to reduce from 60% to 40% the amount of Canadian selections that CKJN-FM must broadcast during each broadcast week and between 6 a.m. and 6 p.m. Monday to Friday in the same broadcast week.

Requested technical changes

32. Durham proposed to change the authorized contours of CKJN-FM by increasing its average effective radiated power (ERP) from 2,500 to 3,750 watts (maximum ERP from 10,000 to 15,000 watts) and by decreasing the effective height of antenna above average terrain (EHAAT) from 109.4 to 108.6 metres.
33. According to Durham, this technical amendment is necessary to implement its plan to revitalize the station. The amendment would allow CKJN-FM to achieve maximum possible coverage, ensure the best coverage for Haldimand County and optimize its signal for the major centres in the market.
34. When a licensee of a radio station files an application for a technical amendment, the Commission expects the licensee to present compelling technical or economic evidence justifying the technical changes. Given this expectation, and after examining the information provided on the public record for this application in light of the applicable regulations and policies, the Commission considers that it must address the following issues:
 - whether Durham has demonstrated a compelling economic need for the proposed technical changes;
 - whether approval of the application would result in an undue negative financial impact on existing radio stations; and
 - whether the proposal represents an appropriate technical solution.

Economic need

35. CKJN-FM has experienced decreasing revenues in four of the past five years. Moreover, regardless of ownership, CKJN-FM has not reported a single year of profitability since its launch in 2007.

36. Accordingly, the Commission finds that the applicant has demonstrated a compelling economic need to justify its requested changes.

Impact on existing radio stations

37. The station's proposed contours would expand audience reach from 14,734 to 28,173 (an increase of 91%) in the station's primary contour and from 474,686 to 497,457 (an increase of 4.8%) in its secondary contour. Despite the significant increase in audience reach in its primary contour, that contour would remain predominantly within Haldimand County, its original licensed service area.
38. Notwithstanding the fact that numerous stations from neighbouring markets can be heard in Haldimand County, no other commercial stations are licensed to serve Haldimand County and its communities.
39. Given the above and the fact that no opposing interventions were filed, the Commission finds that approval of the proposed technical changes would have no undue negative impact on existing radio stations.

Technical solution

40. The station's primary contour would be contained within Haldimand County, although a small section of its coverage would extend north into Hamilton. However, CKJN-FM's existing primary contour already reaches the southern part of Hamilton. In addition, when topography and terrain are taken into account, the station does not completely encompass Hamilton's core in its secondary contour, as the Niagara Escarpment acts as a natural barrier in that direction.
41. The Commission therefore finds that the proposed technical solution is appropriate to increase coverage within Haldimand County.

Conclusion

42. In light of all of the above, the Commission **approves** the application by Durham Radio Inc. for authority to acquire from Vista Radio Ltd. the assets of the English-language commercial radio programming undertaking CKJN-FM Haldimand County and for a broadcasting licence to continue the operation of the station. According to Durham's proposal, \$50,000 over the next five years will flow primarily to local artists' initiatives.
43. The Commission also **approves**, in part, the application by Durham Radio Inc. to reduce the amount of Canadian selections that CKJN-FM must broadcast. Consequently, CKJN-FM must now devote 40% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety each broadcast week and between 6 a.m. and 6 p.m. in the period from Monday to Friday of the same broadcast week. A **condition of licence** to that effect is set out in the appendix to this decision.

44. Finally, the Commission **approves** Durham Radio Inc.'s application to change the authorized contours of CKJN-FM by increasing its average ERP from 2,500 to 3,750 watts (maximum ERP from 10,000 to 15,000 watts) and by decreasing the EHAAT from 109.4 to 108.6 metres.
45. Upon surrender of the current licence issued to Vista, the Commission will issue a new broadcasting licence to Durham, which will expire 31 August 2022. The terms and **conditions of licence** for the station are set out in the appendix to this decision.

Secretary General

Related documents

- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Various radio programming undertakings – Acquisition of assets*, Broadcasting Decision CRTC 2012-577, 19 October 2012
- *CKJN-FM Haldimand County – Licence amendment*, Broadcasting Decision CRTC 2009-558, 3 September 2009
- *Applications granted approval pursuant to streamlined procedures*, Broadcasting Public Notice CRTC 2007-60, 7 June 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *English-language FM radio station in Haldimand County*, Broadcasting Decision CRTC 2005-169, 20 April 2005

** This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2016-258

Terms, conditions of licence, expectation and encouragement for the English-language commercial radio programming undertaking CKJN-FM Haldimand County, Ontario

Terms

The licence will expire on 31 August 2022.

The station will operate at 92.9 MHz (channel 225B1) with an average effective radiated power (ERP) of 3,750 watts (maximum ERP of 15,000 watts with an effective height of antenna above average terrain of 108.6 metres).

Pursuant to section 22(1) of the *Broadcasting Act*, this authority will only be effective when the Department of Industry notifies the Commission that its technical requirements have been met and that a broadcasting certificate will be issued.

Conditions of licence

1. The licensee shall adhere to the conditions set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, and to the conditions set out in the broadcasting licence to be issued for the undertaking.
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations), in any broadcast week:
 - (a) devote, in that broadcast week, 40% or more of its musical selections from content category 2 (Popular music) to Canadian selections broadcast in their entirety; and
 - (b) devote, between 6 a.m. and 6 p.m., in the period from Monday to Friday of the same broadcast week, 40% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

For the purposes of this condition, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meaning as that set out in the Regulations.

3. In addition to the required basic annual contribution to Canadian content development set out in section 15 of the *Radio Regulations, 1986*, the licensee shall make an annual contribution of \$10,000 (\$50,000 over five consecutive broadcast years) to the promotion and development of Canadian content. Of this amount, at least 20% per broadcast year shall be allocated to FACTOR or MUSICACTION. The remainder shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

4. The licensee shall refrain from soliciting local advertising in Brantford and in the Town of Simcoe, Ontario.

Expectation

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices

Encouragement

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.