



## Broadcasting Decision CRTC 2008-323

Ottawa, 21 November 2008

### **Vista Radio Ltd.**

Bonnyville and Lloydminster, Alberta

*Application 2008-0932-9, received 7 July 2008*

*Public Hearing in Cambridge, Ontario*

*20 October 2008*

### **CFNA-FM Bonnyville and CKLM-FM Lloydminster – Acquisition of assets**

*The Commission **approves** the application by Vista Radio Ltd. to acquire the assets of the radio programming undertakings CFNA-FM Bonnyville and CKLM-FM Lloydminster, Alberta from 912038 Alberta Ltd. and for broadcasting licences to continue the operation of these undertakings.*

### **The application**

1. The Commission received an application by Vista Radio Ltd. (Vista) to acquire the assets of the radio programming undertakings CFNA-FM Bonnyville and CKLM-FM Lloydminster from 912038 Alberta Ltd., a corporation controlled in equal parts by Anita and Stewart Dent. The applicant also requested broadcasting licences to continue the operation of the undertakings. The Commission did not receive any interventions in connection with this application.
2. Vista is a wholly owned subsidiary of Vista Broadcast Group Inc., a widely held corporation controlled by its board of directors pursuant to the terms of a shareholders' agreement.

### **Commission's analysis and determinations**

3. The Commission has carefully examined the application and has identified the following four issues to be addressed in its determinations:
  - the sale of CFNA-FM within its first licence term;
  - the assessment of the value of the transaction;
  - the assessment of the proposed tangible benefits; and
  - the assessment of Canadian content development commitments.

#### **Sale of CFNA-FM within its first licence term**

4. The Commission is generally concerned when broadcasting undertakings are put up for sale within their first licence term. Such transactions raise issues relating to the integrity of the licensing process and the potential for licence trafficking.

5. In Broadcasting Notice of Public Hearing 2008-10, the Commission noted that the broadcasting licence for CFNA-FM was approved in Broadcasting Decision 2006-632 and that consequently the proposed transaction would occur within its first licence term.
6. In this regard, the vendor stated that its application for the new FM in Bonnyville (CFNA-FM) was part of its existing business plan to convert its then Bonnyville repeater CKLM-FM-1 into an originating station for the Lakeland Region and that it had no imminent plans to sell at the time of that application. The vendor indicated that CFNA-FM commenced operations on 28 September 2007 and that it was only after the station was fully established that it entertained the possibility of selling it. The vendor added that the decision to sell was motivated by age and a desire to retire. Finally, the vendor provided a breakdown of expenditures related to the operation of CFNA-FM, based on which it estimated that the gain resulting from the sale of the station would amount to \$57,000.
7. The Commission is satisfied that the vendor obtained the licence for CFNA-FM in 2006 with the intention of operating the station according to its regulatory obligations and does not stand to realize an unreasonable financial gain from the sale of the undertaking. As a result, the Commission considers that the integrity of the licensing process would not be compromised by approval of the proposed transaction.

**Assessment of the value of the transaction**

8. Because the Commission does not solicit competing applications for authority to transfer the ownership or control of radio, television and other programming undertakings, the onus is on the applicant to demonstrate that the tangible benefits proposed in the application are adequate and that the proposed value of the transaction is acceptable and reasonable. In this regard, the Commission generally expects applicants to make commitments to tangible benefits representing a financial contribution of 6% of the value of the transaction for radio undertakings.
9. Vista submitted that the value of the transaction is \$7.3 million, based on the terms of the Asset Purchase Agreement dated 30 May 2008.
10. Commission practice is to include in the value of the transaction certain elements such as the commitments related to operating leases. The Commission notes that Vista did not provide the specific value of such commitments. Instead, the applicant relied on the total value of commitments provided in the note to financial statements as at 31 August 2007 (\$438,302). It specified that this amount included elements other than operating lease commitments which related to donation commitments totalling \$11,000. The appropriate amount related to the operating lease commitments thus amounts to \$427,302.

11. Vista further claimed that an amount of \$88,053 representing the operating lease commitments to be paid up to the date of closing should be deducted from the total lease commitments of \$427,302. The Commission notes that its practice is to include the full value of operating lease commitments without specific adjustment at closing and therefore considers that the total lease commitments amount should not be reduced by the amount claimed.
12. As a result, the revised value of the transaction for the purpose of calculating the tangible benefits package is \$7,727,302 (\$7,300,000 + \$427,302).

#### **Assessment of the proposed tangible benefits**

13. Consistent with the Commission's tangible benefits policy outlined in Broadcasting Public Notice 2006-158, Vista proposed a tangible benefits package equal to 6% of the proposed \$7.3 million value of the transaction (\$438,000), to be allocated as follows over seven broadcast years:
  - 3% to the Radio Starmaker Fund;
  - 2% to FACTOR; and
  - 1% to the Communications Studies Program at Athabasca University.
14. Considering the revised value of the transaction, the value of the proposed tangible benefits package will increase from the proposed \$438,000 to \$463,638 (i.e. 6% of the revised amount of \$7,727,302).
15. Given the revised tangible benefits package, the Commission directs Vista to allocate the additional amounts in the same proportions as proposed over seven broadcast years.
16. Further, with respect to the proposed contribution to Athabasca University, the Commission reminds Vista that such contributions must be directed towards initiatives that specifically benefit students of music and journalism.

#### **Assessment of the Canadian content development commitments**

17. As of 1 September 2008, commercial radio licensees must adhere to the requirements relating to contributions to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986* (the Regulations).
18. In the case of CFNA-FM, Vista proposed to devote \$800 in each broadcast year to CCD. This amount would include the annual basic minimum CCD contribution of \$500, as well an over and above contribution of \$300. However, should revenues increase such that Vista would be obligated to contribute \$1,000 annually to CCD pursuant to section 15 of the Regulations, Vista indicated that it would cease its over and above contribution of \$300 to CCD. A **condition of licence** to this effect is set out in the appendix to this decision.

19. In the case of CKLM-FM, the Commission reminds Vista that it is required to adhere to the requirements relating to CCD set out in section 15 of the Regulations.

### **Conclusion**

20. The Commission **approves** the application by Vista Radio Ltd. to acquire the assets of the radio programming undertakings CFNA-FM Bonnyville and CKLM-FM Lloydminster from 912038 Alberta Ltd.
21. Upon surrender of the current licences issued to 912038 Alberta Ltd., the Commission will issue new licences to Vista Radio Ltd. The licences will expire 31 August 2013, the expiry date of the current licences, and will be subject to the terms and **conditions** set out in the appendix to this decision.

### **Employment equity**

22. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the department of Human Resources and Social Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

### **Related documents**

- Broadcasting Notice of Public Hearing CRTC 2008-10, 21 August 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *English-language FM radio station in Bonnyville*, Broadcasting Decision CRTC 2006-632, 20 November 2006

*This decision is to be appended to each licence. It is available in alternative format upon request and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.*

## **Appendix to Broadcasting Decision CRTC 2008-323**

### **Terms and conditions of licence for CFNA-FM Bonnyville and CKLM-FM Lloydminster**

#### **Terms**

The licences will expire 31 August 2013.

#### **Combined condition of licence for CFNA-FM Bonnyville and CKLM-FM Lloydminster**

1. The licensee shall expend the following tangible benefit amounts over seven broadcast years:
  - \$231,819 to the Radio Starmaker Fund;
  - \$154,546 to FACTOR; and
  - \$77,273 to the Communications Studies Program at Athabasca University.

#### **Conditions of licence for CFNA-FM Bonnyville and CKLM-FM Lloydminster**

1. 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, with the exception of conditions 1 and 5.
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in section 2.2(8) of the *Radio Regulations, 1986*, devote, in each broadcast week, a minimum of 40% of its musical selections from content category 2 (Popular Music) 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 *Radio Regulations, 1986*.

3. If the licensee originates 42 or more hours of programming in any broadcast week, it shall adhere to the Canadian Association of Broadcasters’ *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

#### **Additional condition of licence for CFNA-FM Bonnyville**

1. The licensee shall expend, at a minimum, an annual direct contribution to Canadian content development of \$800 for each broadcast year of the licence term.