



Broadcasting Decision CRTC 2014-400

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Route reference: 2014-189

Ottawa, 31 July 2014

Clear Sky Radio Inc.
Lethbridge, Alberta

Applications 2014-0151-2 and 2014-0224-7, received 18 February 2014 and 14 March 2014

*Public hearing in the National Capital Region
26 June 2014*

CKVN-FM Lethbridge – Acquisition of assets

*The Commission **approves** an application by Clear Sky Radio Inc. for:*

- *authority to acquire from Golden West Broadcasting Ltd. the assets of the English-language specialty FM radio station CKVN-FM Lethbridge; and*
- *a broadcasting licence to continue the operation of the station.*

*The Commission also **approves** the applicant's request to delete conditions of licence relating to the station's programming. This will allow CKVN-FM to move from a specialty (Christian music) to a Modern Rock music format.*

Applications

1. Clear Sky Radio Inc. (Clear Sky) filed an application for authority to acquire from Golden West Broadcasting Ltd. (Golden West) the assets of the English-language specialty (Christian music) radio station CKVN-FM Lethbridge and for a broadcasting licence to continue the operation of the station.
2. The applicant also filed an application in which it requested that CKVN-FM no longer be required to operate within the specialty (Christian music) format. Consequently, it proposed deletion of certain conditions of licence relating to programming, which would allow CKVN-FM to move from a specialty to a Modern Rock music format. The applicant indicated that the station's acquisition was conditional on the Commission's approval of the removal of these conditions of licence.
3. Clear Sky is a corporation jointly controlled by Paul Larsen and Mary McKinnon Mills.
4. As a result of the transaction, Clear Sky will become the licensee of CKVN-FM.

Interventions

5. The Commission received interventions in opposition to the applications from several individuals as well as from Pat Lough of Strive Communications Inc. The applicant submitted a reply to the interventions by the individuals and to Pat Lough's intervention. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca or by using the application numbers provided above.
6. In their interventions, the individuals submitted that they did not want to lose the only family-friendly, Christian music station in Lethbridge.
7. For his part, Pat Lough argued that Clear Sky is attempting to obtain a licence in the Lethbridge radio market without going through a competitive call for applications process. Further, Mr. Lough pointed out that the Commission denied a similar application in 2012 by Lighthouse Broadcasting Limited (Lighthouse) in Medicine Hat for a format change,¹ at which time he was the owner and president of Lighthouse. He also indicated that a significant portion of Clear Sky's revenues would flow from existing broadcasters and that Lethbridge is adequately served with enough commercial media options. Finally, Mr. Lough added that there would be a loss of diversity in the market if CKVN-FM's format were changed.

Applicant's replies

8. In reply to the individuals, Clear Sky argued that the Christian music format is not commercially viable in a market the size of Lethbridge, adding that an insufficient number of businesses have supported CKVN-FM financially by advertising on the station. Clear Sky noted that it had committed to keeping the musical programming of CKVN-FM alive via an online radio station delivered over the Internet, should there be sufficient demand to warrant it.
9. With respect to Mr. Lough's intervention, Clear Sky replied that Mr. Lough fueled the public interventions in an email that he blanketed to Lethbridge and area pastors, churches and ministries. Clear Sky also highlighted that neither the Jim Pattison Broadcast Group (Jim Pattison) nor Rogers Broadcasting Limited (Rogers), the licensees of the existing stations in the Lethbridge market, intervened in opposition to the applications. The applicant further argued that since both Clear Sky and Golden West were successful candidates in a 2006 Call for applications,² the integrity of the original licensing decision is maintained.
10. Moreover, the applicant argued that the application by Lighthouse referred to by Mr. Lough, which the Commission denied, is not similar to the proposed transaction

¹ The Commission denied this application in Broadcasting Decision 2012-82.

² In Broadcasting Decision 2006-327, the Commission approved an application by Golden West to acquire from Spirit Broadcasting Ltd. the assets of CJTS-FM (now CKVN-FM). In Broadcasting Decision 2006-328, the Commission approved an application by 1182743 Alberta Ltd. (now Clear Sky) to operate a commercial radio station in Lethbridge.

since the former was filed only two years after Mr. Lough purchased the station and two years after the Medicine Hat commercial market grew from two to four stations. Clear Sky added that Golden West has owned and operated CKVN-FM within the specialty (Christian music) format for the duration of the previous seven-year licence term.

11. Finally, Clear Sky submitted that CKVN-FM will operate in the market within a new format and that it is confident that total market spending on radio will increase, thereby mitigating any impact on existing stations. It added that diversity of programming would remain strong due to its distinct music format.

Issues

12. After examining the public record for these applications in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
 - the request for the proposed deletion of conditions of licence relating to CKVN-FM's programming; and
 - application of the tangible benefits policy should the proposed transaction be approved by the Commission.

Deletion of conditions of licence relating to CKVN-FM's programming

13. Clear Sky proposed to delete the following conditions of licence relating to programming set out in Appendix 2 to Broadcasting Decision 2013-608:
 2. The station shall be operated within the Specialty format as defined in *A Review of Certain Matters concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995, and *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010, as amended from time to time.
 3. The licensee shall devote at least 95% of all musical selections broadcast each broadcast week to selections from subcategory 35 (Non-classic religious).
 4. As an exception to the percentage of Canadian musical selections set out in section 2.2(3) of the *Radio Regulations, 1986*, the licensee shall devote at least 20% of all content category 3 (Special Interest Music) musical selections broadcast each broadcast week to Canadian selections and schedule them in a reasonable manner throughout each broadcast week.
 5. The licensee shall devote a maximum of 25% of all content category 2 (Popular Music) musical selections broadcast each broadcast week to hit material as defined in *Policy regarding the broadcast of hits by English-language FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-61, 11 February 2009, as amended from time to time.

6. Where the licensee broadcasts religious programming as defined in *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993, the licensee shall adhere to the guidelines set out in sections III.B.2.a) and IV. of that public notice with respect to the provision of balance and ethics in religious programming, as amended from time to time.
14. Clear Sky indicated that these changes are necessary because the station's current Christian music format is not economically viable. The applicant proposed to offer a mainstream Modern Rock music format that would appeal to those between 12-34 years of age with a core of 18-34 years of age skewed to a male audience.
15. The Commission has analyzed the request based on the following criteria:
- Has Clear Sky demonstrated an economic need justifying the proposed change of format?
 - Can the Lethbridge radio market sustain a new mainstream radio service as proposed by Clear Sky?
 - Would approval of the application undermine the integrity of the licensing process?
 - What would be the impact of approval of the applications on diversity of voices and on programming diversity?

Economic need

16. Based on the financial information available to the Commission, the station has generally reported negative annual profits before interest and taxes (PBIT) since its launch and has accumulated significant financial losses since that time.
17. Clear Sky indicated that it agrees with Golden West that the station's current format is not viable in the Lethbridge radio market. Under the proposed format, Clear Sky projected that the station's yearly revenues would increase in comparison to 2013, and that it would report a cumulative PBIT of \$1.1 million over seven years.
18. Clear Sky further submitted that Golden West does not wish to continue operating the station as a stand-alone service in the competitive Lethbridge radio market if the transaction with Clear Sky is not approved.
19. Although Golden West has not submitted to the Commission its intentions should the transaction fail, the Commission notes that based on Clear Sky's submission, the future of CKVN-FM would be uncertain if it were to deny its proposed format change.
20. Based on the foregoing, the Commission finds that the applicant has demonstrated a compelling economic need for the proposed amendments.

Addition of a mainstream radio service

21. The Lethbridge radio market is currently served by five mainstream commercial radio stations operating within various formats, as well as by CKVN-FM. Rogers and Jim Pattison each operate two stations in that market, while Clear Sky and Golden West each operate one.³ If the transaction were approved, the market would see a competitive balance with Rogers, Jim Pattison and Clear Sky each operating two stations.
22. Between 2009 and 2013, advertising revenues in Lethbridge increased at a compound annual growth rate of 1.7%, to reach \$9.4 million in 2013. The combined profitability of the commercial radio stations was 19.8% in 2013 and has been consistently above 15% since 2009. With the exception of CKVN-FM, all of the stations reported a positive PBIT in 2013.
23. The Commission further notes that approval of Clear Sky's proposal to change the music format would result in an existing Lethbridge station potentially generating additional incremental revenues. In that regard, the Commission notes that the incremental amounts mentioned above would represent between 2.7% and 8% of the total revenues that were generated by the commercial radio services in 2013 in that market.
24. With respect to the potential financial impact on existing stations, the Commission is of the view that Rogers' CJRX-FM would be the most vulnerable station due to the potential overlap in music programming and target audience. CJRX-FM operates within a Mainstream Rock music format and targets a male audience between the ages of 18 and 44, while Clear Sky's proposed Modern Rock format would target a male audience between the ages of 18 and 34.
25. Although the incumbent radio stations, notably CJRX-FM, could lose some revenues to Clear Sky's proposed station, the Commission considers that the following factors would mitigate any potential financial impact on existing stations in the Lethbridge radio market:
 - as CKVN-FM already draws some revenues from the market given that it has been broadcasting for over ten years, the incremental revenues should be modest;
 - CJRX-FM is owned by Rogers, a well-established group that operates two stations in the market. While CJRX-FM's financial situation has been irregular over the last five years, Rogers as a group exhibits a strong financial performance in Lethbridge, and as such, is well positioned to sustain any additional competition that CKVN-FM could bring to the market.

³ Rogers operates CFRV-FM (Adult Contemporary) and CJRX-FM (Mainstream Rock), Jim Pattison operates CHLB-FM (Country) and CJBZ-FM (Top 40/CHR), and Clear Sky operates CJOC-FM (Classic Hits).

26. Considering the recent performance of advertising revenues in the Lethbridge radio market, the fact that the incumbent operators are experienced players that are well established in that market, that neither Rogers nor Jim Pattison were opposed to Clear Sky's proposal, and that CKVN-FM presently operates in Lethbridge and consequently already draws advertising revenues from that market, the Commission is of the view that the market can sustain financially the proposed format change for CKVN-FM and that the change would not likely have an undue negative impact on the incumbent services.

Integrity of the licensing process

27. Although broadcasters may apply to amend their conditions of licence at any time, the Commission generally expects applicants that were awarded licences through a competitive process to maintain their commitments made by condition of licence for at least the duration of the first licence term. The Commission notes that under Golden West, CKVN-FM has operated within the specialty (Christian music) format for the duration of an entire seven-year licence term. In fact, the Christian music format was in place before Golden West acquired the station in 2006.

28. The Commission notes that it has approved similar applications by other licensees regarding stations operating within the specialty format following competitive processes.⁴ As such, the request by Clear Sky should be viewed in the context of CKVN-FM having met its specialty format obligations over the first licence term. The Commission therefore finds that deletion of the conditions of licence pertaining to the specialty format would not undermine the integrity of the licensing process.

Impact on diversity of voices and on programming diversity

29. In Broadcasting Regulatory Policy 2008-4, the Commission specified that diversity in the Canadian broadcasting system relates to diversity of elements, plurality of editorial voices within the private element, as well as programming diversity.

30. With respect to programming diversity, CKVN-FM has operated as a niche Christian music service that has struggled to garner a sufficient audience or advertiser base due to its niche programming appeal, despite the efforts of an established radio operator in Golden West. The Commission is of the view that the introduction of a Modern Rock music format in Lethbridge would add programming diversity and appeal to a much broader audience.

31. The Commission notes that it has received numerous interventions from listeners in opposition to the proposed format change. In that regard, Clear Sky indicated in its supplementary brief that it would be prepared to create a local Lethbridge-focused Christian Internet radio station to balance against the loss of the Christian music format in Lethbridge, should it find significant local demand following approval of its application. The station would be identical musically to what is currently offered on

⁴ See Broadcasting Decisions 2011-739, 2013-431, 2013-550, 2014-115 and 2014-116.

CKVN-FM, as well as feature some local spoken word content created by Clear Sky's Lethbridge radio stations.

32. The Commission is of the view that denying the format change and the non-severable ownership application would not ensure the maintenance of the Christian music format in Lethbridge. It is also of the view that for the reasons mentioned above, the future of the station would be uncertain if the transaction were to fail.
33. Accordingly, the Commission finds that although the proposed format change would not increase the diversity of voices in the market, it would add programming diversity. It would also provide for a competitive balance, with all three Lethbridge licensees operating two FM stations, resulting in an overall stronger local radio market.

Commission's decision

34. Given that Clear Sky has demonstrated an economic need justifying the proposed format change, that the market can sustain a new mainstream service, and that approval would not have a significant undue impact on the existing radio stations, would not undermine the integrity of the licensing process and would introduce programming diversity, the Commission finds it appropriate to approve the applicant's request to delete the conditions of licence set out above.

Application of the tangible benefits policy

35. In Broadcasting Public Notice 2006-158, the Commission set out its tangible benefits policy in regard to transactions involving radio stations. In that policy, the Commission considered it appropriate to require a financial contribution of 6% of the value of the transaction to the development of Canadian content. However, the Commission does not generally require tangible benefits for commercial radio stations that are unprofitable over the first five years of operations. Radio stations are considered to be unprofitable if their PBIT averaged over three years preceding the filing of the application to purchase is negative.
36. Since CKVN-FM's average PBIT over the three years preceding the filing of the ownership application has been negative, the Commission finds that tangible benefits are not required for this transaction. However, Clear Sky indicated in its application that if its proposed format change were approved, it would agree to contribute the equivalent of 6% of the revised value of the transaction (including the assumed leases valued at \$50,000) to Canadian content development (CCD) initiatives over-and-above the required basic amount, for a total contribution of \$78,000. Given that the value of the transaction, as determined by the Commission, is \$1,436,825, the total over-and-above amount to CCD over seven consecutive broadcast years is \$86,210 (\$12,316 per year). Clear Sky will direct 20% of the over-and-above amount to FACTOR, with the balance being directed to eligible local CCD initiatives. A **condition of licence** to that effect is set out in the appendix to this decision.

Conclusion

37. In light of all of the above, the Commission **approves** the application by Clear Sky Radio Inc. for authority to acquire from Golden West Broadcasting Ltd. the assets of the English-language specialty FM radio programming undertaking CKVN-FM Lethbridge and for a broadcasting licence to continue the operation of the station.
38. The Commission further **approves** Clear Sky's application to delete the conditions of licence set out above relating to the station's programming, thereby allowing CKVN-FM to move from a specialty (Christian music) to a Modern Rock music format.
39. Upon surrender of the current licence issued to Golden West Broadcasting Ltd., the Commission will issue a new broadcasting licence to Clear Sky Radio Inc., which will expire 31 August 2020. The terms and **conditions of licence** for this station are set out in the appendix to this decision.

Secretary General

Related documents

- *CKNI-FM Moncton – Acquisition of assets and licence amendments*, Broadcasting Decision CRTC 2014-116, 14 March 2014
- *CHNI-FM Saint John – Acquisition of assets, licence amendments and technical changes*, Broadcasting Decision CRTC 2014-115, 14 March 2014
- *Diversity of voices - Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *CFJL-FM Winnipeg – Licence renewal and amendments*, Broadcasting Decision CRTC 2013-550, 11 October 2013
- *CHUP-FM Calgary – Licence renewal and amendment*, Broadcasting Decision CRTC 2013-431, 23 August 2013
- *CJLT-FM Medicine Hat – Licence amendments*, Broadcasting Decision CRTC 2012-82, 9 February 2012
- *CJGV-FM Winnipeg – Licence renewal*, Broadcasting Decision CRTC 2011-739, 30 November 2011
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *English-language FM radio station in Lethbridge*, Broadcasting Decision CRTC 2006-328, 2 August 2006
- *Acquisition of assets*, Broadcasting Decision CRTC 2006-327, 2 August 2006

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

Appendix to Broadcasting Decision CRTC 2014-400

Terms, conditions of licence and encouragement for the English-language commercial radio programming undertaking CKVN-FM Lethbridge, Alberta

Terms

The licence will expire 31 August 2020.

Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, as amended from time to time.
2. In addition to the basic annual contribution to Canadian content development set out in section 15 of the *Radio Regulations, 1986*, the licensee shall, upon commencement of operations, make an annual contribution of \$12,316 (\$86,210 over seven consecutive broadcast years) to the promotion and development of Canadian content. Of this amount, not less than 20% per broadcast year shall be devoted 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.

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.