



## Broadcasting Decision CRTC 2015-573

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Reference: 2015-433

Ottawa, 22 December 2015

**Harvard Broadcasting Inc.**  
Red Deer, Alberta

*Application 2015-0371-4, received 24 April 2015*  
*Public hearing in the National Capital Region*  
*18 November 2015*

### **CKIK-FM Red Deer – Acquisition of assets**

*The Commission **approves** an application by Harvard Broadcasting Inc. (Harvard) for authority to acquire from L.A. Radio Group Inc. the assets of the English-language commercial radio station CKIK-FM Red Deer and for a broadcasting licence to continue the operation of the station.*

*This transaction serves the public interest as it will put Harvard on the same footing as the other mainstream commercial operators with two radio stations in the market and therefore will help ensure the long-term viability of CKIK-FM and CKRI-FM, the licensee's other station in Red Deer.*

*As a result of the tangible benefits arising from this transaction, \$281,629 over the next seven years will flow to various initiatives that support the production and promotion of Canadian music and increase the diversity of radio programming available to listeners.*

### **Application**

1. Harvard Broadcasting Inc. (Harvard) filed an application for authority to acquire from L.A. Radio Group Inc. (L.A. Radio) the assets of the English-language commercial radio station CKIK-FM Red Deer and for a broadcasting licence to continue the operation of the station under the same terms and conditions as those in effect under the current licence. The Commission did not receive any interventions regarding this application.
2. Harvard is owned and controlled by Paul James Hill and currently operates the English-language commercial radio station CKRI-FM Red Deer.

### **Regulatory framework**

3. 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.

4. The Commission must consider the merits of each application 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.

### **Public interest**

5. 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

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

### **Commission's analysis and decisions**

6. Currently, Red Deer has five commercial radio operators: Harvard, Jim Pattison Group, L.A. Radio, Newcap and Touch Canada Broadcasting, which operates a specialty Christian station. In the event of a favorable decision on its application to acquire the assets of CKIK-FM from L.A. Radio, Harvard would own and control two radio stations in Red Deer, thus reducing the number of mainstream commercial radio operators in the market to three.
7. Harvard argued that the synergies and economies of scale associated with having two stations in the market would strengthen its presence in Red Deer, allowing it to better compete with Newcap and Jim Pattison Group, each of which already operates two FM stations in the market. Harvard also stated that the economic downturn in Alberta had created additional concerns and uncertainty in the market's ability to maintain current revenue levels.
8. The Commission considers that approving the application would be in the public interest as it would put Harvard on the same footing as the other mainstream commercial

operators in the market and therefore would help ensure the long-term viability of both CKIK-FM and CKRI-FM.

9. The Commission's decision that the proposed transaction is in the public interest is based on an assessment of the transaction in light of the regulatory framework set out above. In examining the proposed transaction, the Commission also focused on the following issues:
- the value of the transaction;
  - the proposed tangible benefits package; and
  - the length of the new licence term to be granted in light of CKIK-FM's apparent non-compliance with its Canadian content development (CCD) obligations.

### **Value of the transaction**

10. As set out in Broadcasting Public Notice 2008-57 and Broadcasting Regulatory Policy 2014-459, the Commission determines the value of the transaction for the purpose of calculating the tangible benefits using the value of the transaction as a whole, including the value of any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities calculated over five years.
11. Pursuant to the terms of the asset purchase and sale agreement dated 20 March 2015, the purchase price for the assets is \$4,200,000. The purchaser will also take on leases for the studios and transmission facilities for a total value of \$493,809 over a period of five years. Therefore, in accordance with the above-noted policies, the value of the transaction amounts to \$4,693,809, as set out below:

#### **Value of the transaction**

Purchase price	\$4,200,000
Assumed leases	\$493,809
<b>Total</b>	<b>\$4,693,809</b>

### **Proposed tangible benefits package**

12. Consistent with the Commission's tangible benefits policy as set out in Broadcasting Public Notice 2006-158 and amended in Broadcasting Regulatory Policy 2014-459, the applicant proposed a tangible benefits package of \$281,629 (6% of the value of the transaction of \$4,693,809), to be allocated as follows in equal annual payments over seven consecutive broadcast years:
- 3% (\$140,815) to the Radio Starmaker Fund;
  - 1.5% (\$70,407) to FACTOR;

- 1% (\$46,938) to eligible local CCD initiatives; and
- 0.5% (\$23,469) to the Community Radio Fund of Canada.

### **Length of the licence term and non-compliance**

13. As set out in Appendix 3 to Broadcasting Decision 2008-287, the licensee of CKIK-FM is required by condition of licence to make a CCD contribution of \$16,000 in each broadcast year for a total of \$112,000 over seven consecutive broadcast years. This contribution is in addition to the basic annual CCD contribution required under section 15 of the *Radio Regulations, 1986* (the Regulations).
14. While the over-and-above CCD contribution of \$112,000 and the total basic CCD amount were paid over the licence term, Commission staff's review of the licensee's file revealed shortfalls in the total basic and over-and-above CCD contributions for the 2010-2011 through 2013-2014 broadcast years. All shortfalls were paid in the 2014-2015 broadcast year.
15. Based on the above, the Commission finds the licensee in non-compliance with section 15 of the Regulations and its condition of licence regarding CCD contributions for the 2010-2011 through 2013-2014 broadcast years.
16. The Commission's approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2014-608. Under that approach, each instance of non-compliance is evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The circumstances, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.
17. The Commission notes that the non-compliance took place under the management of L.A. Radio and that all shortfalls were paid in 2015. Moreover, this is the first instance of non-compliance for CKIK-FM.
18. In light of the preceding, the Commission considers that a shortened licence term until 31 August 2021 would be appropriate for CKIK-FM. This shortened term will allow for an earlier review of the licensee's compliance with the Regulations and its conditions of licence.

### **Conclusion**

19. In light of all of the above, the Commission **approves** the application by Harvard Broadcasting Inc. for authority to acquire from L.A. Radio Group Inc. the assets of the English-language commercial radio programming undertaking CKIK-FM Red Deer and for a broadcasting licence to continue the operation of the station.
20. Upon surrender of the current licence issued to L.A. Radio Group Inc., the Commission will issue a new broadcasting licence to Harvard Broadcasting Inc. expiring 31 August 2021. The terms and **conditions of licence** are set out in the appendix to this decision.

## Other matters

21. As a result of this decision, the Commission will not consider the application (2014-0722-1) by L.A. Radio Group Inc. to renew the broadcasting licence for CKIK-FM.

Secretary General

## Related documents

- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Licensing of new radio stations to serve Red Deer and technical change relating to CJUV-FM Lacombe*, Broadcasting Decision CRTC 2008-287, 17 October 2008
- *Allocation of the transaction value in changes in the effective control of broadcasting undertakings* – Information bulletin, Broadcasting Public Notice CRTC 2008-57, 30 June 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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

## **Appendix to Broadcasting Decision CRTC 2015-573**

### **Terms, conditions of licence, expectation and encouragement for the English-language commercial radio programming undertaking CKIK-FM Red Deer, Alberta**

#### **Terms**

The licence will expire on 31 August 2021.

#### **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 well as the conditions set out in the broadcasting licence for the undertaking.
2. 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), the licensee shall devote at least 40% of its musical selections from content category 2 (Popular Music) in each broadcast week and between 6 a.m. and 6 p.m. from Monday to Friday to Canadian selections broadcast in their entirety.

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

#### **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.