



Broadcasting Decision CRTC 2017-136

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Reference: 2016-465

Ottawa, 5 May 2017

Radio 1540 Limited

Toronto, Ontario

Applications 2016-0939-8 and 2016-0984-3, received 1 September 2016

Public hearing in the National Capital Region

16 February 2017

Ethnic FM radio station in Toronto and licence amendment for CHIN Toronto

*The Commission **approves** the application (2016-0984-3) by Radio 1540 Limited (Radio 1540) for a broadcasting licence to operate a commercial ethnic FM radio station in Toronto. The terms and **conditions of licence** are set out in the appendix to this decision.*

*Radio 1540 proposed to operate the new FM station using the parameters of its rebroadcasting transmitter CHIN-1-FM Toronto. Accordingly, the Commission also **approves** Radio 1540's application (2016-0939-8) to amend the broadcasting licence for its commercial ethnic AM radio station CHIN Toronto in order to delete CHIN-1-FM as a transmitter.*

Applications

1. Radio 1540 Limited (Radio 1540) filed an application (2016-0984-3) for a broadcasting licence to operate a commercial ethnic FM radio station in Toronto.
2. Radio 1540 is a corporation owned by 1252591 Ontario Limited (81.17%), which is held by Leonard and Theresa Lombardi. The effective control of Radio 1540 is exercised by Leonard Lombardi.
3. Radio 1540 is also the licensee of the commercial ethnic AM radio station CHIN Toronto. It proposed to operate the new FM station using the technical parameters of CHIN's rebroadcasting transmitter CHIN-1-FM Toronto, namely at 91.9 MHz (channel 220A) with an average effective radiated power (ERP) of 1,850 watts (maximum ERP of 5,000 watts with an effective height of antenna above average terrain of 86 metres). Accordingly, it also filed an application (2016-0939-8) to amend the broadcasting licence for CHIN in order to delete CHIN-1-FM as a transmitter in the event of an approval of its first application (2016-0984-3).

4. During each broadcast week, the station would broadcast 126 hours of programming, 84 hours of which would be devoted to local programming. For the remaining 42 hours (i.e. between 7 p.m. and 7 a.m. each day), the station would simulcast CHIN's programming.
5. The station's original programming would consist of a mix of talk, programming segments relating to health, financial advice and local talent, community news and world beat and international music, as well as 10 hours and 24 minutes of news, including 4 hours and 52 minutes of local and regional news.
6. Radio 1540 stated that it would adhere to conditions of licence requiring it to:
 - devote all of the station's local programming (84 hours each broadcast week) to ethnic programs;
 - devote at least 80% of its ethnic programming to third-language programs; and
 - direct its ethnic programming to at least 15 cultural groups in at least 7 different languages each broadcast week.
7. Radio 1540 further proposed to devote, by condition of licence, at least 10% of its musical selections in each broadcast week to Canadian selections, which exceeds the regulatory minimum for ethnic programming periods set out in the *Radio Regulations, 1986* (the Regulations).
8. All commercial radio licensees must adhere to the requirements relating to contributions to Canadian content development (CCD) set out in section 15 of the Regulations, as amended from time to time. In addition, Radio 1540 proposed to devote, by condition of licence, a total of \$105,000 in over-and-above CCD contributions to the following initiatives, with the funds to be allocated in equal payments over seven consecutive broadcast years:
 - \$70,000 (\$10,000/year) to scholarships at accredited universities in the Greater Toronto Area for the study of journalism and music; and
 - \$35,000 (\$5,000/year) to Canadian Music Week to showcase emerging Canadian musical artists who perform in a third language.

Interventions and applicant's reply

9. The Commission received a joint intervention supporting the applications and a comment from an individual, as well as opposing interventions from CIRC Radio Inc. (CIRC), Radio Markham York Inc. (Radio Markham) and 8041393 Canada Inc. (8041393 Canada). The public record for these applications can be found on the Commission's website at www.crtc.gc.ca or by using the application numbers provided above.

10. According to CIRC, licensee of the ethnic commercial radio station CIRV-FM Toronto, introducing a new ethnic FM service into the market would be premature given the market's current financial state and the recent addition of radio services in Brampton and Scarborough. CIRC further noted that the application for a new FM ethnic service did not correspond to any of the exceptions set out in the Commission's policy on the issuance of calls for radio applications and submitted that it should have triggered a call.
11. Radio Markham, licensee of the commercial station CFMS-FM Markham, which provides both English- and third-language programming, also submitted that the application was contrary to the Commission's call policy. Noting the challenges facing ethnic broadcasters at this time, it submitted that approval of the new FM application would have a detrimental impact on existing services and particularly on CFMS-FM.
12. 8041393 Canada, licensee of the commercial ethnic radio station CJRK-FM Scarborough, also stated that the proposed station would impact its listenership and revenues. It noted that CJRK-FM just launched in the fall of 2016 and that it already provides service to the Chinese community and is currently the only station to provide programming in Persian and Arabic.
13. Finally, CIRC and 8041393 Canada both noted that the proposal would not maintain the same level of service for CHIN listeners as the current rebroadcasting transmitter, which provides additional coverage to the Toronto and York regions during the sunset-to-sunrise period when AM stations must reduce their power. CIRC also submitted that the application was contrary to section 14(1) of the Regulations relating to simulcasting.
14. In reply, Radio 1540 submitted that proceeding with the consideration of its applications was consistent with the Commission's regulations, policies and practices for the following reasons:
 - approval of its proposed FM station would have a more limited impact on existing ethnic stations in the Greater Toronto Area than that of a station originating programming over the entire broadcast day;
 - no other parties can submit applications for the use of 91.9 MHz as it is already authorized to use that frequency for its rebroadcasting transmitter; and
 - the two-year pause for new FM applications set out in the Commission's call policy applies not to the two years following the launch of the new station, but rather to the two years following the licensing decision.
15. Finally, Radio 1540 acknowledged that its proposal would result in a slight increase in interference for CHIN listeners for periods in the early morning and afternoon for part of the year, but stated that this interference would be limited and generally of short duration and should not have a significant effect on CHIN's listenership.

Commission's analysis and decisions

16. Having considered the public record for these applications in light of applicable regulations and policies, the Commission considers that it must address the following issues:

- the application of Broadcasting Regulatory Policy 2014-554, in particular whether the Commission should seek comment on market capacity or issue a call for applications for the market;
- whether the proposed station would have an undue negative impact on existing stations in the market;
- whether the proposal is consistent with the objectives set out in Public Notice 1999-117 (the Ethnic Broadcasting Policy); and
- whether an exception to the Regulations is required to allow the proposed station to simulcast 42 hours of programming originating from CHIN.

Application of Broadcasting Regulatory Policy 2014-554

17. As stated in Broadcasting Regulatory Policy 2014-554, the Commission will not generally be disposed to accept applications for a commercial station in a specific market for a period of two years following the issuance of a decision approving a new service as a result of a call or where it has decided not to issue a call due to market capacity concerns. However, in the case of the Toronto market, the last licensing decision following a call was Broadcasting Decision 2012-485. The recent licensing decisions for Scarborough (Broadcasting Decision 2014-574) and for Brampton (Broadcasting Decision 2015-471) did not follow a call for radio applications.

18. Additionally, a call for applications for the use of the 91.9 MHz frequency in Toronto cannot be issued as the frequency is already being used by Radio 1540 to operate its FM transmitter.

19. Generally, upon receiving an application for a new radio station that does not fall under one of the exceptions set out in its call policy, the Commission publishes a notice seeking comment on market capacity and the appropriateness of issuing a call for competing applications. However, given that the frequency in question is already in use and licensed to the applicant as a rebroadcasting transmitter, the Commission is of the view that these unique circumstances warrant a deviation from the call policy set out in Broadcasting Regulatory Policy 2014-554. Therefore, it is appropriate to proceed with the consideration of the applications on their merits.

Impact of the proposed station on existing stations in the market

20. The Toronto market benefits from positive economic and demographic indicators, including a large and growing non-official language population,¹ of which the Chinese-language community represents a significant portion, as well as strong retail sales and gross domestic product forecasts. Although the two stations in the market that primarily target the Chinese-language community will potentially be the most affected by the proposed service, any impact will likely be mitigated by the fact that one of the stations (CHIN) is owned by the applicant, while the other (CHKT) is well established.
21. With respect to the potential impact of the proposed station on CFMS-FM, there are differences in the target markets of the two stations that will limit this impact. Specifically, while the applicant proposes to provide a service that will consist mainly of third-language programs, CFMS-FM provides a primarily mainstream English-language programming service complemented by 36.9% third-language ethnic programming. Further, the interference-free contours for the proposed service and CFMS-FM have minimal overlap.
22. Finally, as regards the impact on the recently licensed ethnic station CJRK-FM in Scarborough and the unlaunched ethnic AM station in Brampton, the proposed station would likely have minimal impact on those stations given that they primarily target different language groups, service the local Scarborough and Brampton communities and have no overlap in their primary service contours.
23. Based on the above, the Commission is of the view that approval of the application for a new FM ethnic radio service would not have an undue negative impact on existing stations in the Toronto radio market.

Ethnic Broadcasting Policy objectives

24. As set out in the Ethnic Broadcasting Policy, ethnic stations are expected to serve a range of ethnic groups in a variety of languages, striking a balance between serving as many groups as practical and providing high-quality programming to those groups.
25. The Commission establishes the minimum number of distinct groups that a station must serve on the basis of the demographics of the community, the services already available and the degree of support shown by local community organizations. In addition, in establishing the required number of distinct groups to be served, the Commission will also weigh the ability of ethnic stations to provide appropriate amounts of quality programming to these groups and the availability of ethnic programming from all stations serving a market.

¹ Population speaking a non-official language most often at home, Statistics Canada 2011 Census.

26. In the Commission's view, Radio 1540's proposal meets the objectives of the Ethnic Broadcasting Policy and the *Broadcasting Act* and will enhance service to underserved communities, while adding programming diversity in the market, including local reflection, news and information.

Simulcasting of programming originating from CHIN Toronto

27. CIRC submitted that because Radio 1540's proposal involves rebroadcasting 42 hours of CHIN's programming, it would be contrary to section 14(1) of the Regulations, which states:

An F.M. licensee or digital radio licensee that is also an A.M. licensee shall not, during the broadcast day, broadcast simultaneously on its F.M. station or digital radio station the same matter that is being broadcast on its A.M. station if any part of the F.M. station's 3 mV/m contour or the digital radio station's digital service area overlaps with any part of the A.M. station's daytime 15 mV/m contour.

28. However, as set out in section 14(3) of the Regulations, a licensee may broadcast simultaneously for a maximum of 42 hours during any broadcast week.

29. Accordingly, Radio 1540 will be allowed to simulcast up to 42 hours of CHIN's programming each broadcast week on its new FM station. Radio 1540's proposal is therefore in accordance with the Regulations and does not require any exceptions.

30. With regard to the submission that the proposal would not maintain the same level of service for CHIN listeners as the current rebroadcasting transmitter CHIN-1-FM, the Commission recognizes that CHIN must reduce its power after sunset and maintain the power reduction until sunrise. As such, there could be short periods of time, particularly from September to April, where listeners in the North York area would not have the same level of service. However, as noted above, Radio 1540's proposal adds programming diversity in the market. Moreover, Radio 1540 proposed to simulcast CHIN's programming in the evening and has indicated that the proposal should not have a significant effect on CHIN's listenership.

Conclusion

31. In light of all of the above, the Commission **approves** the application (2016-0984-3) by Radio 1540 Limited for a broadcasting licence to operate a commercial ethnic FM radio programming undertaking in Toronto. The terms and **conditions of licence** are set out in the appendix to this decision.

32. The Commission also **approves** Radio 1540 Limited's application (2016-0939-8) to amend the broadcasting licence for the commercial ethnic AM radio programming undertaking CHIN in order to delete CHIN-1-FM as a transmitter.

Secretary General

Related documents

- *Licensing of new radio stations to serve Brampton*, Broadcasting Decision CRTC 2015-471, 21 October 2015
- *Licensing of new radio stations to serve Scarborough and technical changes for existing radio stations serving Scarborough, Toronto and Whitchurch-Stouffville*, Broadcasting Decision CRTC 2014-574, 5 November 2014
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *Licensing of a new radio station to serve Toronto*, Broadcasting Decision CRTC 2012-485, 11 September 2012
- *Ethnic broadcasting policy*, Public Notice CRTC 1999-117, 16 July 1999

This decision is to be appended to each licence.

Appendix to Broadcasting Decision CRTC 2017-136

Terms, conditions of licence, expectation and encouragement for the commercial ethnic FM radio programming undertaking in Toronto

Terms

The licence will expire 31 August 2023.

The station will operate at 91.9 MHz (channel 220A) with an average effective radiated power (ERP) of 1,850 watts (maximum ERP of 5,000 watts with an effective height of antenna above average terrain of 86 metres).

Pursuant to section 22(1) of the *Broadcasting Act*, no licence may be issued until the Department of Industry notifies the Commission that its technical requirements have been met and that a broadcasting certificate will be issued.

Further, the Commission will only issue a licence for this undertaking once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before **5 May 2019**. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this date.

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, with the exception of condition of licence 7, as well as to the conditions set out in the broadcasting licence for the undertaking.
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.
3. With respect to the station's 84 hours of original, local programming in each broadcast week:
 - a) As an exception to the percentage of Canadian musical selections set out in section 2.2(4) of the *Radio Regulations, 1986*, the licensee shall devote at least 10% of the musical selections from content category 3 (Special Interest Music) broadcast during ethnic programming periods in each broadcast week to Canadian selections.
 - b) The licensee shall devote 100% of the programming broadcast each broadcast week to ethnic programs, as defined in the *Radio Regulations, 1986*, as amended from time to time.

- c) The licensee shall devote at least 80% of the programming broadcast each broadcast week to third-language programs, as defined in the *Radio Regulations, 1986*, as amended from time to time.
 - d) In each broadcast week, the licensee shall provide programming directed to at least 15 distinct ethnic groups in at least 7 different languages.
4. In addition to the required basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time, the licensee shall, upon commencement of operations, make an annual contribution of \$15,000 (\$105,000 over seven consecutive broadcast years) to the promotion and development of Canadian content.

This additional CCD contribution 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.

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.