



## Broadcasting Decision CRTC 2017-260

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Reference: 2017-94

Ottawa, 20 July 2017

**Dufferin Communications Inc.**  
Brantford, Ontario

*Application 2017-0033-6, received 20 January 2017*  
*Public hearing in the National Capital Region*  
*15 June 2017*

### **CFWC-FM Brantford – Acquisition of assets**

*The Commission **approves** an application by Dufferin Communications Inc. for authority to acquire from 1486781 Ontario Limited the assets of the English-language specialty (Christian music) radio station CFWC-FM Brantford and for a broadcasting licence to continue the operation of the station.*

*This transaction serves the public interest as it will ensure that CFWC-FM remains on air and continues to serve the community of Brantford.*

*The Commission **denies** the applicant's request for an exception from the requirement to pay tangible benefits. As a result of the tangible benefits stemming from this transaction, \$26,400 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. Dufferin Communications Inc. (Dufferin) filed an application for authority to acquire from 1486781 Ontario Limited (1486781 Ontario) the assets of the English-language specialty (Christian music) radio station CFWC-FM Brantford 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. Dufferin is a wholly owned subsidiary of Evanov Communications Inc., which is controlled by Mr. William Vasil Evanov. 1486781 Ontario is a wholly owned subsidiary of Sound of Faith Broadcasting Inc. (Sound of Faith), a not-for-profit corporation effectively controlled by its board of directors. Sound of Faith is the licensee of CFWC-FM and of the English-language specialty (Christian music) radio stations CHJX-FM London, CJFH-FM Woodstock and CJTW-FM Kitchener. Following the transaction, Dufferin would become the licensee of CFWC-FM.

3. Dufferin stated that the programming and orientation of CFWC-FM would remain distinct and local, targeting the community it serves through its niche Christian music format.
4. According to the Agreement of Purchase and Sale (Assets) dated 1 June 2015, the purchase price amounts to \$440,000. Dufferin requested an exception to the requirement to pay tangible benefits as part of this transaction, arguing that CFWC-FM has suffered significant losses and that it would be in the public interest to continue the operation of the station. It added, however, that should this request be denied, it would move forward with the transaction.

## **Regulatory framework**

5. 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.
6. 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 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):

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.

## **Issues**

7. 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 transaction would be in compliance with the Commission's common ownership policy for radio;

- the value of the transaction and the request for an exception from the requirement to pay tangible benefits;
- the payment of outstanding tangible benefits from a previous ownership transaction; and
- the length of the new licence term.

### **Compliance with the common ownership policy for radio**

8. The Commission's common ownership policy for radio<sup>1</sup> sets out that in radio markets with fewer than eight commercial stations operating in a particular language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band. Dufferin currently operates the commercial radio stations CKPC-FM Brantford and CKPC Brantford. In acquiring CFWC-FM, it would own and control two stations on the FM band and one station on the AM band in Brantford. As such, the proposed transaction would not breach the Commission's common ownership policy for radio.

### **Value of the transaction and request for an exception from the requirement to pay tangible benefits**

9. The Commission's approach for determining the value of the transaction for the purpose of calculating tangible benefits is set out in Broadcasting Regulatory Policy 2014-459. This approach uses 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. As noted above, pursuant to the terms of the Agreement of Purchase and Sale (Assets), the purchase price for the assets is \$440,000. The Commission finds this value to be consistent with its approach for calculating the value of the transaction.
10. As noted above, Dufferin requested an exception from the requirement to pay tangible benefits. The Commission's tangible benefits policy is set out in Broadcasting Regulatory Policy 2014-459. In that regulatory policy, the Commission stated that there may be cases where the public interest could be fully met without tangible benefits if the following criteria are met:
  - 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 (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.

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<sup>1</sup> Set out in Public Notice 1998-41 and reiterated in Broadcasting Information Bulletin 2010-341

11. In regard to the above, CFWC-FM has been in operation since 2001 and, therefore, is not in its first licence term (a licence term is a maximum of seven years). Further, CFWC-FM has experienced financial losses during the last five consecutive years. With the exception of 2013, the station's total revenues have been relatively stagnant while its expenses have steadily increased during the same period.
12. In regard to the third criterion, approval of the transaction would serve the public interest as it would ensure CFWC-FM remains on air and continues to serve the community of Brantford. However, Dufferin would become the sole radio operator and licensee in the Brantford market, thereby limiting the diversity of voices in that market. In this regard, in Broadcasting Public Notice 2008-4, the Commission set out that a plurality of ownership in the private element is necessary in order to maximize the diversity of voices in the Canadian broadcasting system.
13. Furthermore, the acquisition of undertakings, even if small or unprofitable, often involves certain intangible benefits, including branding, the ability to cross promote services and more windows for programming and advertising, as well as programming rights, carriage and packaging agreements. In this regard, Dufferin stated that it expects to benefit from reduced expenses stemming from synergies between CFWC-FM and its other Brantford stations (for example, by sharing studios, production facilities and back-room systems), while maintaining its own newsroom, music and programming departments. Through these intangible benefits, Dufferin would be able to further solidify its presence in the Brantford radio market.
14. In light of the above, the Commission finds that it would not be appropriate to grant Dufferin the requested exception from the requirement to pay tangible benefits, and **denies** that request. Consequently, Dufferin will be required to pay tangible benefits stemming from the present transaction.
15. As set out in the tangible benefits policy, tangible benefits must generally represent at least 6% of the value of the transaction. The Commission has calculated the tangible benefits package to be \$26,400 (6% of \$440,000). The Commission **directs** Dufferin to expend \$26,400 in equal amounts over seven consecutive broadcast years, to be allocated as follows:
  - 3% of the value of the transaction (\$13,200) to the Radio Starmaker Fund or Fonds Radiostar;
  - 1.5% of the value of the transaction (\$6,600) to FACTOR or MUSICACTION;
  - 1% of the value of the transaction (\$4,400), at the discretion of the purchaser, to any eligible Canadian content development (CCD) initiatives; and
  - 0.5% of the value of the transaction (\$2,200) to the Community Radio Fund of Canada (CRFC).

## **Outstanding tangible benefits from a previous ownership transaction**

16. In a letter of authority dated 17 February 2012, the Commission administratively approved the change in the effective control of 1486781 Ontario from Mr. Anthony Schleifer to Sound of Faith.<sup>2</sup> Consistent with the tangible benefits policy at that time, the Commission required Sound of Faith to pay tangible benefits in the amount of \$22,696, to be allocated as follows in equal payments over a seven-year period:

- 3% of the value of the transaction (\$11,348) to the Radio Starmaker Fund or Fonds Radiostar;
- 1.5% of the value of the transaction (\$5,674) to FACTOR or MUSICACTION;
- 1% of the value of the transaction (\$3,783), at the discretion of the purchaser, to any eligible CCD initiative; and
- 0.5% of the value of the transaction (\$1,891) to the CRFC.

17. Given that the seven-year period has not yet ended, there are unfulfilled benefits totalling \$6,484 (\$3,242 for each of the 2016-2017 and 2017-2018 broadcast years). The Commission **directs** Dufferin to fulfill these outstanding tangible benefits, to be allocated equally as follows over the 2016-2017 and 2017-2018 broadcast years:

- 3% of the value of the transaction (\$3,242) to the Radio Starmaker Fund or Fonds Radiostar;
- 1.5% of the value of the transaction (\$1,621) to FACTOR or MUSICACTION;
- 1% of the value of the transaction (\$1,081), at the discretion of Dufferin, to any eligible CCD initiative; and
- 0.5% of the value of the transaction (\$540) to the CRFC.

18. In regard to discretionary contributions, for the 2014-2015 and 2015-2016 broadcast years, South of Faith reported contributions totaling \$1,080 to a party identified as “GMA Events.” However, it did not provide supporting documentation to demonstrate the eligibility of those contributions or how the funding provided was used by the recipient. It was only in response to clarification questions that Dufferin indicated that GMA Events is the management company responsible for the business affairs of the Gospel Music Association of Canada. Dufferin added that the Commission has recognized this party as eligible.

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<sup>2</sup> See Broadcasting Information Bulletin 2012-353.

19. It is incumbent upon licensees to supply sufficient documentation to support the eligibility of their contributions to discretionary initiatives. Failure to do so may result in the Commission finding a contribution ineligible and may affect a station's compliance with its regulatory obligations.
20. Further, as specified in paragraph 108 of Broadcasting Public Notice 2006-158, contributions to eligible music industry associations are to be used for initiatives that directly assist Canadian musical artists, and not to defray an organization's ongoing administration or operating costs. Although the Gospel Music Association of Canada is recognized as an example of an eligible music industry association on the Commission's [website](#), no documentation was provided to show how the reported contributions to GMA Events were used. Consequently, the Commission considers the \$1,080 contribution to GMA Events to be an ineligible contribution. The Commission notes that Dufferin, in a letter dated 15 February 2017, indicated that it would ensure all payments are made in a timely manner and make up for any shortfalls on behalf of Sound of Faith.
21. In light of the above, the Commission **directs** Dufferin to fulfill the outstanding tangible benefits for the 2014-2015 and 2015-2016 broadcast years by contributing the required amount of \$1,080 to eligible CCD initiatives **within 90 days of the issuance of the new broadcasting licence for CFWC-FM**.

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

22. In Broadcasting Decisions 2008-346 and 2013-413, the Commission renewed the broadcasting licence for CFWC-FM for short-term periods given the station's non-compliance with requirements relating to Canadian talent development (CTD) and CCD contributions.
23. The Commission's current 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.
24. In light of CFWC-FM's history of non-compliance and of the current shortfalls regarding the payment of tangible benefits, the Commission considers it appropriate to grant CFWC-FM a short-term licence renewal, until 31 August 2021. This short-term renewal will allow for an earlier review of the licensee's compliance with its regulatory obligations.

#### **Conclusion**

25. In light of all of the above, the Commission **approves** the application by Dufferin Communications Inc. for authority to acquire from 1486781 Ontario Limited the assets of the English-language specialty (Christian music) radio programming undertaking CFWC-FM Brantford and for a broadcasting licence to continue the operation of the station.

26. Upon surrender of the current licence issued to 1486781 Ontario Limited, the Commission will issue a new broadcasting licence to Dufferin Communications Inc. expiring 31 August 2021. The terms and **conditions of licence** are set out in the appendix to this decision.

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
- *CFWC-FM Brantford – Licence renewal*, Broadcasting Decision CRTC 2013-413, 16 August 2013
- *Applications processed pursuant to streamlined procedures*, Broadcasting Information Bulletin CRTC 2012-353, 28 June 2012
- *Revised guidelines for the application of the Common Ownership Policy for Radio*, Broadcasting Information Bulletin CRTC 2010-341, 4 June 2010
- *CFWC-FM Brantford – Licence renewal*, Broadcasting Decision CRTC 2008-346, 5 December 2008
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998

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

## **Appendix to Broadcasting Decision CRTC 2017-260**

### **Terms, conditions of licence, expectation and encouragement for the English-language specialty (Christian music) radio programming undertaking CFWC-FM Brantford, Ontario**

#### **Terms**

The licence will expire on 31 August 2021.

#### **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 licensee shall operate the station 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. During each broadcast week, at least 95% of all musical selections shall be drawn from subcategory 35 (Non-classic religious), as defined in *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010.
4. During each broadcast week, at least 15% of all musical selections drawn from content category 3 (Special Interest Music) shall be Canadian selections.

For the purposes of these conditions, the terms “content category,” “broadcast week,” “Canadian selection” and “musical selection” shall have the same meanings as those set out in the *Radio Regulations, 1986*.

#### **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.