



Broadcasting Decision CRTC 2018-12

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References: 2017-316, 2017-316-1

Ottawa, 15 January 2018

Byrnes Communications Inc.
Niagara Falls and Fort Erie, Ontario

Public record for this application: 2017-0445-3
Public hearing in Toronto, Ontario
28 November 2017

CJED-FM Niagara Falls and CFLZ-FM Fort Erie – Acquisition of assets

*The Commission **approves** an application by Byrnes Communications Inc. (Byrnes) for authority to acquire from Vista Radio Ltd. the assets of the English-language commercial radio stations CJED-FM Niagara Falls and CFLZ-FM Fort Erie, Ontario.*

Byrnes stated that it will invest in the two stations, including in their capacity to offer local programming. The Commission considers that this transaction provides benefits for the broadcasting system and for the residents of Niagara Falls and Fort Erie.

Application

1. Byrnes Communications Inc. (Byrnes) filed an application for authority to acquire from Vista Radio Ltd. (Vista) the assets of the English-language commercial radio stations CJED-FM Niagara Falls and CFLZ-FM Fort Erie, Ontario. Byrnes also requested new broadcasting licences to continue the operation of the undertakings under the same terms and conditions as those in effect under the current licences. The Commission received interventions in support of this application.
2. Byrnes is wholly owned and controlled by Christopher Byrnes, a Canadian within the meaning of the *Direction to the CRTC (Ineligibility of Non-Canadians)*.
3. Pursuant to the Purchase and Sale Agreement, the applicant would purchase the assets of the undertakings for \$800,000. Byrnes requested an exception to the requirement to pay tangible benefits.
4. Following the closing of the proposed transaction, Byrnes would become the licensee of CJED-FM and CFLZ-FM.

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 each application on its merits, 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.

Commission's analysis and decisions

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:
 - the impact on the broadcasting system;
 - the request for an exception to the requirement to pay tangible benefits; and
 - the compliance of the stations with regulatory requirements and the length of the licence terms.

Impact on the broadcasting system

8. Byrnes is also the licensee of CIHR-FM Woodstock. Byrnes stated that it would like to reproduce in Niagara Falls and Fort Erie the success it has had in Woodstock.
9. CJED-FM and CFLZ-FM are the only stations with a local presence in Niagara Falls and Fort Erie. The Commission considers that the transaction will help preserve the diversity of voices in the market. Accordingly, the Commission finds that the transaction is in the public interest and provides benefits for the broadcasting system and for the residents of Niagara Falls and Fort Erie.

Request for an exception to the requirement to pay tangible benefits

10. As set out in Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy), the Commission generally requires the payment of tangible benefits when there is a change to the effective control of a radio programming service. However, in the Tangible Benefits 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.
11. In this case, CJED-FM and CFLZ-FM are not in their first licence terms and both have accumulated significant financial losses for over five years. In addition, Byrnes suggested that the public interest would be better served if, instead of paying tangible benefits, it could invest in the stations. Specifically, the applicant stated that it would improve the music library, train personnel, hire new personnel and improve the infrastructure. The applicant stated that it may purchase a new transmitter to cover the authorized contours fully. In addition, as the only radio operator who would have a local presence in Niagara Falls and Fort Erie, Byrnes stated that it would develop local programming specifically targeted to these communities, similar to what it has done in Woodstock.
 12. In light of the above, the Commission considers that an exception to the requirement to pay tangible benefits would be in the public interest in this case.

Compliance and length of the licence term

13. The Commission reviewed the stations' compliance with their regulatory obligations. It found that while the licensee submitted the annual reports for the 2015-2016 broadcast year on time, the financial statements for both undertakings were submitted two weeks late.
14. 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.
15. Given that these were the only instances of non-compliance, the Commission finds it appropriate to issue licences that will expire on 31 August 2024, which corresponds to a full licence term.

Conclusion

16. In light of all of the above, the Commission **approves** the application by Byrnes Communications Inc. for authority to acquire from Vista Radio Ltd. the assets of the English-language commercial radio programming undertakings CJED-FM Niagara Falls and CFLZ-FM Fort Erie.
17. Upon surrender of the current licences issued to Vista, the Commission will issue new broadcasting licences to Byrnes. The terms and **conditions of licence** for these stations 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

This decision is to be appended to each licence.

Appendix to Broadcasting Decision CRTC 2018-12

Terms, conditions of licence and encouragement for the English-language commercial radio stations CJED-FM Niagara Falls and CFLZ-FM Fort Erie

Terms

The licences will expire on 31 August 2024.

Standard conditions of licence applicable to CJED-FM Niagara Falls and CFLZ-FM Fort Erie

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.

Condition of licence applicable to CJED-FM Niagara Falls

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 in any broadcast week during which at least 90% of the musical selections from content category 2 that it broadcasts are selections released before 1 January 1981:
 - a) devote, in that broadcast week, a minimum of 30% of its musical selections from content category 2 to Canadian selections broadcast in their entirety; and
 - b) devote between 6 a.m. and 6 p.m., in the period from Monday to Friday of the same broadcast week, a minimum of 30% of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

The licensee shall specify, on the music lists it submits to the Commission, the year of release for all musical selections it broadcasts.

For the purposes of this condition, the terms “broadcast week,” “content category” and “musical selection” shall have the same meanings as those set out in section 2 of the Regulations.

Condition of licence applicable to CFLZ-FM Fort Erie

3. During each broadcast week, the licensee shall broadcast, at a minimum, three hours of news programming. Of this amount, a minimum of 30% (54 minutes) each week shall be devoted to local news of direct and particular relevance to Fort Erie and the Niagara region.

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.