



Broadcasting Decision CRTC 2020-79

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Reference: Part 1 application posted on 31 January 2020

Ottawa, 28 February 2020

Intercity Broadcasting Network Inc.

Toronto, Ontario

Public record for this application: 2020-0061-0

CKFG-FM Toronto – Licence amendments

*The Commission **approves in part** an application by Intercity Broadcasting Network Inc., in regard to its English-language commercial (specialty) radio station CKFG-FM Toronto, by extending the deadline to fulfill the requirements relating to additional Canadian content development contributions set out in conditions of licence 6, 7 and 9 in the appendix to Broadcasting Decision 2018-325 and subsequently amended in Broadcasting Decision 2019-305. The licensee shall be required to pay the same amounts as set out in the current conditions of licence, rather than the amounts that it has proposed, by the new dates specified in the present decision.*

Background

1. In Broadcasting Decision 2018-325, the Commission renewed the broadcasting licence for the English-language commercial (specialty) radio station CKFG-FM Toronto for a short-term period of three years in light of instances of non-compliance by the licensee, Intercity Broadcasting Network Inc. (Intercity), with regulatory requirements relating to Canadian content development (CCD) contributions¹ and the broadcast of Canadian musical selections.² In addition, the Commission imposed conditions of licence requiring Intercity to make additional CCD contributions totalling \$183,120 by no later than 31 August 2019, and to provide, by 30 November 2019, supporting documentation (including sufficient proof of payment and eligibility) to the Commission.
2. In Broadcasting Decision 2019-305, the Commission approved in part an application by Intercity to extend the deadlines to fulfill the requirements relating to additional CCD contributions set out in those conditions of licence. Whereas the licensee requested the extension until 31 August 2020, the Commission determined that a six-

¹ The licensee was found in non-compliance with sections 15(2) and 15(5) of the *Radio Regulations, 1986* and with its condition of licence relating to over-and-above CCD contributions for the 2011-2012 through 2015-2016 broadcast years.

² The licensee was found in non-compliance with sections 2.2(3)(b), 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* for the 15 to 21 November 2015 broadcast week.

month extension of the original deadlines, until 29 February 2020, would be appropriate given the reasons set out in Broadcasting Decision 2018-325 for imposing the above-noted conditions of licence (i.e., to rectify shortfalls in complying with CCD contribution requirements, and to remedy the harm caused to the Canadian broadcasting system through the licensee's non-compliance with CCD contribution requirements and with requirements relating to the broadcast of Canadian musical selections). The current conditions of licence are as follows:

6. 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 make a contribution of \$72,060 to CCD by no later than 29 February 2020 to cover the outstanding shortfalls from the previous licence term, with supporting documentation (including sufficient proof of payment and eligibility) to be submitted to the Commission by no later than 30 November 2020.

Of this amount, the licensee shall allocate no less than \$1,346 to the Community Radio Fund of Canada. The remaining amounts of 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.

7. 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, and in addition to the CCD contribution required in condition of licence 6, the licensee shall make a contribution of \$72,060 to CCD by no later than 29 February 2020 to remedy the harm caused to the Canadian broadcasting system resulting from the licensee's non-compliance with its regulatory obligations relating to CCD from the previous licence term, with supporting documentation (including sufficient proof of payment and eligibility) to be submitted to the Commission by no later than 30 November 2020.

Of this amount, the licensee shall allocate no less than \$32,427 to FACTOR and no less than \$10,809 to the Community Radio Fund of Canada. The remaining amounts of 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.

9. 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, and in addition to the CCD contributions required in conditions of licence 6 and 7, the licensee shall make a contribution of \$39,000 to FACTOR by no later than 29 February 2020 to remedy the harm caused to the Canadian broadcasting system resulting from the licensee's non-compliance with its regulatory obligations relating to the broadcast of Canadian musical selections from the previous licence term, with supporting documentation (including

sufficient proof of payment) to be submitted to the Commission by no later than 30 November 2020.

Application

3. Intercity filed an application to amend the above-noted conditions of licence regarding the payment of additional CCD contributions in order to extend the current 29 February 2020 deadline set out in Broadcasting Decision 2019-305. The licensee made the following proposal, which includes new deadlines, as well as contributions amounts totalling \$170,965:
 - \$49,769 to be contributed by 31 August 2020;
 - \$49,769 to be contributed by 31 August 2021; and
 - \$71,427 to be contributed to FACTOR following new money injection as expected from restructuring the station, or by 28 February 2021.
4. In regard to the balance of \$12,155 (\$183,120 – \$170,965), the licensee filed a copy of a cheque in that amount that was dated 22 January 2020 and addressed to the Community Radio Fund of Canada (CRFC), to fulfill the portion of its additional CCD contributions to be directed to that organization as specified in the above-noted conditions of licence 6 and 7 (i.e., \$1,346 and \$10,809, respectively).
5. Noting the difficulty that previous management had in dealing with the station's instances of non-compliance and the lack of leadership at the station following the 30 April 2019 death of Mr. Fitzroy Gordon, who held effective control of the undertaking, the licensee indicated that the previous management failed to develop any plans or a strategy to meet the regulatory obligations imposed in Broadcasting Decision 2018-325.
6. Intercity further indicated, however, that following an Order of the Ontario Superior Court on 2 December 2019, an interim governance and management structure was established to ensure the continuance of the station's operations. Accordingly, the current management consists of two directors and shareholders, who have taken over the day-to-day management of the station pursuant to the applicable court orders. Further, a new strategic plan is being finalized to address all regulatory and financial issues affecting the licensee. Intercity expressed its commitment to ensuring compliance with its regulatory obligations at all times and in a way that will ensure the station's viability and its contribution to the Black, Caribbean community and the entire Greater Toronto Area.
7. The Commission did not receive any interventions regarding this application.

Commission's analysis and decisions

8. To ensure the integrity of its licensing process, the Commission expects licensees of radio stations that file applications to amend conditions of licence to present evidence

supporting any proposed amendments. The Commission examines such applications on a case-by-case basis, and may also give consideration to the particulars of an application and any relevant issues raised in interventions.

9. The Commission is mindful of the licensee's rationale for requesting the deadline extensions, specifically, the death of Mr. Gordon, and matters relating to the settlement of his estate. Further, the Commission recognizes that the day-to-day operations of the station were only recently stabilized by an Order of the Ontario Superior Court on 2 December 2019.
10. Given that following the death of Mr. Gordon, the management of the station failed to develop any plans or a strategy in order to meet the outstanding CCD obligations, and in light of the legal proceedings that the management encountered following the passing of Mr. Gordon, the Commission considers that it would be appropriate, in these particular circumstances, to grant the licensee a second extension of time in order for the interim management team to plan and develop their own business and financial strategies in order to fulfill the outstanding CCD obligations.
11. However, the Commission is also mindful of the reasons set out in Broadcasting Decision 2018-325 for imposing the above-noted conditions of licence along with the original 31 August 2019 deadlines to fulfill the additional CCD contribution requirements set out in those conditions of licence that intended to rectify shortfalls in complying with CCD contribution requirements, and to remedy the harm caused to the Canadian broadcasting system through the licensee's non-compliance with CCD contribution requirements and requirements relating to the broadcast of Canadian musical selections. Given that CCD contributions constitute a key element to support the Canadian broadcasting system, the Commission is concerned by the repeated postponement of payment of CCD contributions. In regard to the present case, Intercity's additional CCD commitments were made as part of the application to obtain a new licence in order to operate an English-language commercial specialty FM radio undertaking in the Toronto market.³ In order to ensure the integrity of the Commission's licensing process and avoid causing further harm to the broadcasting system as a whole, the Commission is of the view that the licensee must fulfill its commitments.
12. In light of the above, the Commission finds it appropriate to require the licensee to pay the same amounts specified in the current conditions of licence by the new deadlines requested by the licensee in its application. Therefore, the deadlines to provide the required supporting documentation (including sufficient proof of payment and eligibility) for the additional CCD contributions would be extended until 30 November of the year the contributions were made. These dates coincide with the deadline for the filing of annual returns each broadcast year.

³ See Broadcasting Decision 2011-369.

13. In regard to the copy of the cheque that was provided to the Commission as proof of payment of the \$12,155 to the CRFC, the Commission reminds the licensee that a copy of a cheque does not constitute an acceptable proof of payment. The Commission's approach is clear in that regard. Applicants must file a copy of a cancelled cheque and/or a signed receipt from the third party (i.e., the recipient) to prove that contributions were effectively made and well received.⁴

Conclusion

14. In light of all of the above, the Commission **approves in part** the application by Intercity Broadcasting Network Inc. to amend conditions of licence 6, 7 and 9 set out in the appendix to Broadcasting Decision 2018-325 in order to extend the current 29 February 2020 deadline for the licensee to fulfill the requirements relating to additional CCD contributions set out in those conditions of licence. Accordingly, the Commission replaces the current conditions of licence 6, 7 and 9 set out in the appendix to Broadcasting Decision 2018-325 and subsequently amended in Broadcasting Decision 2019-305 with the following **conditions of licence**:

6. 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 make a contribution of \$72,060 to CCD by no later than **31 August 2020** to cover the outstanding shortfalls from the previous licence term, with supporting documentation (including sufficient proof of payment and eligibility) to be submitted to the Commission by no later than **30 November 2020**.

Of this amount, the licensee shall allocate no less than \$1,346 to the Community Radio Fund of Canada. The remaining amounts of 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.

7. 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, and in addition to the CCD contribution required in condition of licence 6, the licensee shall make a contribution of \$72,060 to CCD by no later than **31 August 2021** to remedy the harm caused to the Canadian broadcasting system resulting from the licensee's non-compliance with its regulatory obligations relating to CCD from the previous licence term, with supporting documentation (including sufficient proof of payment and eligibility) to be submitted to the Commission by no later than **30 November 2021**.

⁴ See Broadcasting Information Bulletin 2011-795 for more detailed information in regard to CCD initiatives and the eligibility criteria.

Of this amount, the licensee shall allocate no less than \$32,427 to FACTOR and no less than \$10,809 to the Community Radio Fund of Canada. The remaining amounts of 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.

9. 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, and in addition to the CCD contributions required in conditions of licence 6 and 7, the licensee shall make a contribution of \$39,000 to FACTOR by no later than **28 February 2021** to remedy the harm caused to the Canadian broadcasting system resulting from the licensee's non-compliance with its regulatory obligations relating to the broadcast of Canadian musical selections from the previous licence term, with supporting documentation (including sufficient proof of payment) to be submitted to the Commission by no later than **30 November 2021**.

Reminders

15. Intercity continues to be subject to the basic annual CCD contribution requirement set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time. The Commission further reminds Intercity that compliance with CCD contribution requirements must be taken seriously and maintained at all times.

Secretary General

Related documents

- *CKFG-FM Toronto – Licence amendments*, Broadcasting Decision CRTC 2019-305, 29 August 2019
- *CKFG-FM Toronto – Licence renewal and amendment*, Broadcasting Decision CRTC 2018-325, 28 August 2018
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *English-language FM radio station in Toronto*, Broadcasting Decision CRTC 2011-369, 9 June 2011

This decision is to be appended to the licence.