



## Broadcasting Decision CRTC 2021-169

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Reference: Part 1 application posted on 17 November 2020

Ottawa, 11 May 2021

**Byrnes Communications Inc.**  
Fort Erie, Ontario

*Public record for this application: 2020-0541-2*

### **CFLZ-FM Fort Erie – Licence amendment**

The Commission **denies** the application by Byrnes Communications Inc. to amend the broadcasting licence for the English-language commercial radio station CFLZ-FM Fort Erie, Ontario, by deleting its condition of licence related to news.

This condition of licence states that, 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.

### **Application**

1. The Commission has the authority, pursuant to section 9(1) of the *Broadcasting Act* (the Act), to issue and renew licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in section 3(1) of the Act, as well as to amend those conditions on application of the licensee.
2. Byrnes Communications Inc. (Byrnes) filed an application to amend the broadcasting licence for the English-language commercial radio programming undertaking CFLZ-FM Fort Erie, Ontario. Specifically, Byrnes proposed to delete condition of licence number 3 set out in the appendix to Broadcasting Decision 2018-12, which reads as follows:

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.

3. The licensee stated that the challenges it faces in meeting the above-noted condition of licence arise during statutory holidays and other unique situations such as staff illnesses or a global pandemic. Byrnes submitted that it is unduly bound by both regulatory inflexibility and a lack of competitive parity since the condition of licence places CFLZ-FM at a competitive disadvantage to stations with no similar

requirement. The licensee further argued that this condition of licence is a long-term legacy placed on a former owner with many compliance issues.

## **Background**

4. In Broadcasting Decision 2005-29, the Commission renewed CFLZ-FM's (then known as CKEY-FM) licence for a one-year term. Among other things, the Commission was not satisfied with the level of local service provided to the Fort Erie/Niagara market and required CJRN 710 Inc., the licensee at the time, to take immediate steps to enhance the news component of the station's programming. Accordingly, the Commission imposed a condition of licence requiring the station to broadcast at least three hours of news in each broadcast week.
5. In Broadcasting Decision 2007-195, the Commission added a requirement that 30% of the three hours of news must be of particular relevance to the station's licensed area.
6. The station has subsequently experienced several ownership changes and the Commission re-imposed the condition of licence with respect to news programming as part of each approval. These include Broadcasting Decision 2018-12, in which the Commission approved the acquisition by Byrnes of CFLZ-FM and CJED-FM Niagara Falls from Vista Radio Ltd.

## **Intervention and the applicant's reply**

7. Durham Radio Inc. (Durham) submitted an intervention opposing the application. Durham argued that, if the application were approved, CFLZ-FM would not have a local presence in Fort Erie and would essentially become a repeater of Byrnes' second station, CJED-FM Niagara Falls.
8. In reply, Byrnes submitted that CFLZ-FM's and CJED-FM's programming, format, and announce staff are different from each other and that it intends to maintain that business model. The licensee reiterated that the purpose of its application is to remove a condition of licence that was imposed punitively on a previous owner and argued that deletion of the condition of licence would allow it to operate on a level playing field with other licensees of radio stations in the Niagara region.

## **Commission's analysis**

9. The Commission expects licensees of radio stations that were granted licences through a competitive process to maintain their original conditions of licence for at least the first licence term and to be in compliance with the conditions of licence they are seeking to amend or delete.
10. While the station is in its first licence term under the current licensee, it is not in its first licence term of operation, and Byrnes is in compliance with its condition of licence related to the broadcast of news. Accordingly, the station has met the Commission's thresholds for considering the deletion of its condition of licence.

11. The Commission acknowledges Byrnes' reasons for requesting deletion of its condition of licence related to news. These include staffing issues on statutory holidays, an inability to produce enough content on statutory holidays, and the pandemic. However, as the sole station licenced to serve Fort Erie, CFLZ-FM offers an independent news voice unique to the Fort Erie-Niagara market, distinct from other market competitors. Further, the amount of news required under the condition of licence is not high, and is a weekly, not a daily requirement, so it is possible for CFLZ-FM to broadcast a lower level of news on weekends and statutory holidays. Further, the COVID-19 crisis is a general problem relating to all licensees, so it does not result in a competitive disadvantage.
12. In Broadcasting Decision 2018-12, the Commission approved Byrnes's application to acquire the assets of CFLZ-FM. In that decision, the Commission relieved CFLZ-FM of the requirement to offer tangible benefits in light of the station's financial situation and because Byrnes made a commitment to invest in the station. The Commission cited Byrnes' commitment to develop local programming specifically targeted to Fort Erie in its reasoning for exempting Byrnes from paying tangible benefits. In light of this commitment to local programming, the Commission is of the view that the condition of licence remains appropriate.
13. In light of all of the above, the Commission **denies** the application by Byrnes Communications Inc. to amend the broadcasting licence for the English-language commercial radio programming undertaking CFLZ-FM Fort Erie, Ontario, by deleting its condition of licence number 3. This condition of licence states that, 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.

Secretary General

### **Related documents**

- *CJED-FM Niagara Falls and CFLZ-FM Fort Erie – Acquisition of assets*, Broadcasting Decision CRTC 2018-12, 15 January 2018
- *CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines - Licence renewal*, Broadcasting Decision CRTC 2007-195, 20 June 2007
- *CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines - Licence renewal*, Broadcasting Decision CRTC 2005-29, 31 January 2005

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