



## Broadcasting Decision CRTC 2021-275

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Reference: 2021-114

Ottawa, 12 August 2021

### **2784486 Ontario Limited**

Toronto, Ontario

*Public record for this application: 2020-0800-5*

*Public hearing in the National Capital Region*

*27 May 2021*

### **CKFG-FM Toronto – Acquisition of assets**

The Commission **approves** an application by 2784486 Ontario Limited for authority to acquire the assets of the English-language commercial (specialty) radio station CKFG-FM Toronto, Ontario, from Intercity Broadcasting Network Inc., and to obtain a new broadcasting licence to continue the operation of the station.

The Commission is of the view that the transaction serves the public interest and the interests of the Caribbean and African communities of Toronto. By providing financial stability to CKFG-FM, which is currently under receivership, the transaction will ensure the survival of the sole commercial station dedicated to the Caribbean and African communities of Toronto.

In addition, the applicant made numerous commitments regarding its programming and employment practices to ensure that the station continues to reflect these communities, thereby enhancing the diversity of programming in the Toronto market.

The Commission understands the concerns raised by numerous members of the Caribbean and African communities and in particular that the station should remain Black-owned and operated. However, no bids were received by a member of this community as part of the court-supervised sale and investment solicitation process, nor did any specific party intervene in this proceeding to express interest in purchasing the station. Accordingly, the Commission has imposed safeguards to ensure that approval of the transaction will yield important and real benefits to the community the station is required to serve, particularly with respect to the reflection of the Caribbean and African communities of Toronto in the programming of the station and prominent involvement of members of these communities in the operation of the station. To strengthen transparency and accountability, the Commission requires the applicant to file an annual report explaining how it fulfills its programming and employment commitments and reporting on its consultations with and the feedback received from these communities. This report will allow the Commission, and the public, to monitor how the licensee fulfills its commitments and will ensure that the licensee is accountable to these communities.

The Commission notes that in Broadcasting Decision 2021-276 it today rendered a decision on a licence renewal application filed by Intercity Broadcasting Network Inc., and granted a short-term licence renewal for CKFG-FM because of its severe and recurrent non-compliance. This will allow the station to continue its operations in the event that the close of the transaction addressed in this decision takes place after the last day of CKFG-FM's current licence term, that is, after 31 August 2021, or in the event that the parties fail to close the transaction. If 2784486 Ontario Limited becomes the licensee of the station prior to 31 August 2021, Broadcasting Decision 2021-276 will not take effect.

Given the station's history of severe non-compliance under the current ownership, the Commission finds that the transaction will also allow CKFG-FM to benefit from the experience in regulatory compliance developed by Neeti P. Ray, the owner of the applicant. Because of this history of severe non-compliance, the Commission is issuing a short-term licence to the applicant in the current decision so that the Commission will have an opportunity to make an early review of how the licensee fulfills its commitments.

### **Application**

1. 2784486 Ontario Limited (278 Limited) filed an application for authority to acquire from Intercity Broadcasting Network Inc. (Intercity) the assets of the English-language commercial (specialty) radio station CKFG-FM Toronto, Ontario, and for a new broadcasting licence to continue its operation under the same terms and conditions as those in effect under the current licence.
2. 278 Limited is wholly owned and controlled by Neeti P. Ray (Neeti Ray).
3. Neeti Ray is also the sole trustee of The Neeti P. Ray Family Trust, which owns and controls 1760791 Ontario Inc., 2345771 Ontario Inc. and 9427899 Canada Inc., which are, respectively, the licensees of the ethnic radio stations CINA Mississauga, CINA-FM Windsor and CKIN-FM Montréal.
4. Neeti Ray is a Canadian residing in Canada and, therefore, 278 Limited is eligible to hold a broadcasting licence pursuant to the *Direction to the CRTC (Ineligibility of Non-Canadians)*.
5. As a result of the transaction, 278 Limited would become the licensee of CKFG-FM.
6. The Commission also received an application (2021-0012-1) by Intercity to renew the broadcasting licence for this station. The Commission published Intercity's application together with this application in Broadcasting Notice of Consultation 2021-114. The broadcasting licence which currently permits the operation of CKFG-FM expires on 31 August 2021.

### **Interventions and replies**

7. The Commission received interventions in regard to this application and Intercity's licence renewal application.

8. Four interventions were submitted by individuals. They requested that the Black community retain ownership of the station. One of them referred to an online petition launched in response to the proposed sale of the station.<sup>1</sup>
9. One other intervention was submitted by the licensee of CIRV-FM Toronto, CIRC Radio Inc. (CIRC Radio), which requested that a condition of licence related to third-language programming be imposed on CKFG-FM if this application is approved.
10. 278 Limited replied to the interventions.
11. On 31 May 2021, after the deadline for filing replies had passed, an intervener filed a procedural request in which he requested that additional documents, which he had mentioned in his intervention, be added to the record of this proceeding. Specifically, the intervener wished to add the list of signatories to the above-mentioned petition (which, at the time the intervention period ended, had been signed by 14,437 individuals); comments from those signatories; and 15 letters written in support of that petition by elected representatives and a CBC Music host/producer.<sup>2</sup>
12. Being of the view that this proceeding would benefit from a complete record that includes all relevant documents, and to ensure the transparency of this proceeding, the Commission approved the request and granted the applicant the right to file a reply.
13. On 17 June 2021, 278 Limited filed a reply in which it reiterated commitments made in its application and its initial reply. The applicant acknowledged the concerns raised by the individuals who signed or supported the petition and intervened in this proceeding. However, the applicant noted that the petition and letters were submitted as part of the court-supervised sale and investment solicitation process (SISP) and before its application was submitted to the Commission and were not in its view comments on the substance of its specific application. This reply marked the close of the public record.
14. Additional submissions were subsequently filed by the intervener and the applicant in response to 278 Limited's reply of 17 June 2021. Since these submissions were filed after the close of record, the Commission's permission was required for these submissions to be added to the record of the proceeding. In the Commission's view, no new issues were raised in the applicant's reply of 17 June 2021 that would require

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<sup>1</sup> This petition was directed to the attention of the Commission (specifically, Ian Scott, Chairperson and Chief Executive Officer, and Scott Shortliffe, Executive Director, Broadcasting) and the Department of Canadian Heritage (specifically, the Honourable Steven Guilbeault, Minister of Canadian Heritage; Camille Gagné-Raynauld, Press Secretary; and Thomas Owen Ripley, Director General, Broadcasting, Copyright and Creative Marketplace).

<sup>2</sup> Letters were submitted by several public figures, including Doug Ford, Premier of Ontario; Andrea Horwath, Leader of the Official Opposition of Ontario; Yasmin Ratansi, Member of Parliament for Don Valley East (Ontario); Angeline Tetteh-Wayoe, Host/Producer, CBC Music; John Tory, Mayor of Toronto; several members of the Legislative Assembly of Ontario; and the Ontario NDP Black Caucus.

an opportunity for further submissions. In addition, the Commission was concerned that accepting additional submissions into the record could delay a decision in this matter. Therefore, the additional submissions filed by the intervener and 278 Limited on 17 June 2021 were not added to the record of this proceeding.

15. After considering the particulars of the applications submitted by Intercity and 278 Limited, and reviewing the interventions and replies placed on the record of this proceeding, the Commission elected to address Intercity's licence renewal application in a separate decision, specifically, Broadcasting Decision 2021-276. The matters raised in the interventions and replies were related to matters specifically relevant to 278 Limited's application to acquire the assets of CKFG-FM Toronto and, therefore, are addressed only in this decision.

## **Background**

16. The Commission authorized Intercity to operate CKFG-FM in Broadcasting Decision 2011-369.
17. In Broadcasting Decision 2018-325, the Commission addressed non-compliance during the station's first licence term and granted a short-term renewal of the broadcasting licence for the station.
18. CKFG-FM was originally owned and controlled by Fitzroy Gordon (a member of the communities to be served by the station) through his ownership of Maja Media Group Inc., which owns 81% of the voting shares of Intercity. When Fitzroy Gordon passed away in April 2019, effective control of CKFG-FM passed to his estate. Jamrock Broadcasting Corporation (Jamrock), which is owned by Delford Blythe, owned the remaining 19% of the voting shares of Intercity.
19. Following the passing of Fitzroy Gordon, Delford Blythe became concerned about the operation and finances of Intercity. Therefore, Delford Blythe, jointly with Jamrock, filed an application under section 248 of the *Ontario Business Corporations Act* that resulted in the appointment, on 3 June 2019, of A. Farber & Partners Inc. (the Receiver) as receiver of certain property for Intercity. The Receiver's role was principally limited to overseeing the monies flowing in and out of Intercity. It did not take control over or assume possession of Intercity's business, operations or assets.
20. The Ontario Superior Court, in an Order dated 2 July 2020, authorized the Receiver to run a SISP. The Receiver selected 278 Limited as the winning bidder, and an Asset Purchase Agreement was entered into on 25 September 2020. This agreement was approved by the Court in an Approval and Vesting Order dated 19 October 2020 and is conditional on the Commission's approval of the transaction.

## **Regulatory framework**

21. 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.

22. 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 subsection 3(1) of the Act.

### **Issues**

23. After examining the record for this application in light of the Canadian broadcasting policy set out in subsection 3(1) of the Act, as well as all other applicable regulations and policies, the Commission considers that the issues it must address are the following:

- the public interest of the proposed transaction, including ensuring continued service to, and reflection of, the Caribbean and African communities of Toronto;
- the format of CKFG-FM and the broadcast of programming in third languages;
- the value of the transaction and tangible benefits; and
- the terms and conditions for CKFG-FM.

### **Public interest**

24. Pursuant to subsection 5(1) and paragraph 5(2)(b) of the Act, the Commission's mandate is to regulate and supervise all aspects of the Canadian broadcasting system in the public interest, in a flexible manner that takes into account regional needs and concerns. The public interest is reflected in the numerous objectives of the Act and of the Canadian broadcasting policy set out in subsection 3(1).
25. To determine whether a proposed transaction is in the public interest, the Commission takes into account a wide set of factors set out in the Act, including the nature of programming and service to the communities involved as well as regional, social, cultural, economic and financial considerations. The Commission must be persuaded that the proposed transaction benefits Canadians and the broadcasting system.

### **Concerns raised by the interveners and petitioners**

26. The Commission received four interventions from individuals who submitted that the Black community should retain ownership of the station. One intervenor—Aubrey Clarke, carrying on business as Envision Urban – Media Sales & Marketing (Envision Urban)—referenced the existence of an online petition that supported this viewpoint, and documents pertaining to the petition were subsequently added to the public record

for this proceeding. The documents—namely the petition with 14,437 signatories including a list of comments provided by some signatories to the petition and 15 letters from public figures in support of the petition—indicate that a great number of supporters of the station share this view.

27. Envision Urban agreed with the views put forward in the petition that Black ownership and control of the station is crucial and that it would ensure that opportunities to work in broadcasting remain open to members of that community. Envision Urban and the petitioners noted that no FM frequency is currently available in Toronto. Since this precludes the addition of a new station, they requested that the station remain, in majority, Black-owned and -operated at all times.
28. According to the petitioners, “it is the very definition of Institutional/Systemic Racism to have anyone outside of the Black Community to own the Black voice.” In the petitioners’ view, keeping the station Black-owned and -operated would not only allow the voice of the Black community to be heard on commercial radio but also help launch the careers of members of that community, whether as artists or in roles related to media sales, programming, news, administration or promotion. In their view, permitting an individual who does not belong to the Black community to own the station would amount to “silencing the Black Voice on commercial radio.” Envision Urban also asserted that the Commission will not meet its mandate to have diversity of voices in ownership, editorial voice and programming unless the station is owned by members of the Black community.
29. Envision Urban also submitted that many Black bidders were interested in the station but declined to proceed once the proposed purchase amount became known. He requested that the Commission, if it were to approve this application, require that the majority of the licensee’s board of directors be Black individuals.

#### **Position of the applicant**

30. 278 Limited stated that the key benefit of the transaction would be a fresh start for the station, which is currently under receivership and would benefit from financial stability and experienced managerial oversight.
31. The applicant recognized the importance of having a station devoted to serving Toronto’s Caribbean and African communities and indicated that it intends to maintain the musical focus of the station (i.e., a range of styles encompassing R&B, soul, reggae, Soca, hip hop, world beat, gospel and smooth jazz) as well as the station’s focus on diverse programming for what the applicant considers to be underserved communities.
32. The applicant indicated that the station’s programming staff and manager would be primarily responsible for the focus and content of the station’s programming and that local staff would be directly involved in, among other matters, music selection, news gathering and presentation (including editorial decisions), and the selection of themes, guests and approaches to in-depth spoken word content. Further, 278 Limited indicated that the perspectives of Toronto’s Black communities would be reflected in

the station's spoken word programming, news programming, and musical selections, and that news segments, which would naturally be similar to news from other sources, would nonetheless maintain a focus on issues affecting Black communities locally and on international stories originating from the Caribbean and Africa.

33. The applicant stated that members of Toronto's Black community would be directly involved in all aspects of the station's operations, and especially in the development, creation and presentation of programming. It committed to actively engaging with the Black community of Toronto when seeking candidates for key positions so as to ensure the community's representation on air, in management and in the development, creation and presentation of programming. The applicant added that positions, including key positions such as station/programming manager and on-air hosts, would be staffed by members of this community. Further, the applicant stated that it would seek and preferentially hire such candidates.
34. Finally, the applicant accepted to report on its commitments regarding its reflection of Caribbean and African communities in both its programming and its employment practices. More specifically, the applicant accepted to be subject to the same condition of licence currently imposed on Intercity, which reads as follows:

The applicant is required to file an annual report by 30 November of each year providing specific details on the manner in which it has fulfilled its programming requirements in serving the Caribbean and African communities of Toronto with its spoken word programming and musical format.

35. The applicant also accepted that the following reporting requirement be added as a condition of licence:

The licensee is required to file an annual report by 30 November of each year providing specific details on the manner in which it has fulfilled its commitment of serving the Black communities in the station's operations and programming roles in light of its employment practices as well as how the programming decisions related to serving the Caribbean and African communities of Toronto were considered and implemented.

#### **Commission's analysis and decisions**

36. The Commission is sensitive to the ownership-related concerns raised by the interveners and acknowledges that there is a great deal of community support for keeping the station Black-owned and -operated. The Commission acknowledges that the petition was signed by over 14,300 individuals and that multiple letters were submitted by members of the community and public figures in support of the station being acquired by a member of the Black community.
37. It also acknowledges the concerns of the interveners and petitioners in regard to whether CKFG-FM, if owned by an individual who does not belong to the Caribbean

or African communities of Toronto, would continue to reflect the viewpoints of these communities in the station's operations and programming.

38. The Commission is of the view that diversity of ownership has a positive impact on the diversity of voices available to Canadians and appreciates that approving the transaction would result in CKFG-FM not being owned by a member of the African and Caribbean communities that the station is required to serve.
39. However, the Commission notes that this application resulted from a court-supervised SISP and that no other applicant is currently being considered as a possible owner for the station. According to the endorsement of the Ontario Superior Court dated 19 October 2020, no government funding was extended and not one bid was received by a member of the Black community to acquire CKFG-FM. In the absence of such a bid, an absence also noted by one of the interveners, the Court considered the available offers and approved the sale of the station to 278 Limited. In addition, although an intervener mentioned that many Black bidders were interested in acquiring the station, the Commission did not receive interventions from any other party interested in doing so following publication of this application in Broadcasting Notice of Consultation 2021-114.
40. The Commission notes that the Court was satisfied that an extensive sales process was undertaken that, given the circumstances, has best served the interests of the stakeholders. The Court also noted that 278 Limited acknowledged the importance of the radio station to members of the Black community and pledged to ensure that the station continues to serve this community. Therefore, the Court was of the view that 278 Limited's bid constitutes "a very good result in a difficult situation at a very challenging time."
41. Approval of the transaction can nevertheless yield important and real benefits to the communities that the station is required to serve, particularly in light of the commitments expressed by the applicant. The denial of the transaction would nullify the benefits related to the current transaction, without ensuring that the station would be owned by members of the Caribbean and African communities.
42. The Commission is of the view that approval of this application would help stabilize the station's finances, allowing the survival of the only commercial radio station in Toronto targeting the local Caribbean and African communities. Denying this application would perpetuate ongoing uncertainty and ensure continued curtailment of CKFG-FM's operations, which would exacerbate the licensee's precarious financial situation and jeopardize the station's future.
43. Neeti Ray, the sole shareholder of 278 Limited, is an experienced broadcaster with significant knowledge of the Toronto broadcasting market and experience in serving specific cultural communities. On this matter, the Commission notes that he launched CINA Mississauga in 2008 and CINA-FM Windsor in 2012, and acquired CKIN-FM Montréal in 2015. The Commission considers that CKFG-FM could benefit from synergies with these stations, such as back-office functions and technology sharing.

44. The Commission also notes that Neeti Ray has demonstrated his ability to operate multiple radio stations in compliance with their regulatory requirements. The licences of CINA-FM Windsor, CKIN-FM Montreal and CINA Mississauga were all renewed for full terms, respectively in broadcasting decisions 2014-267, 2017-244 and 2020-403. Given that the Commission has identified several instances of severe non-compliance in both of CKFG-FM's previous two licence terms, the proposed change in ownership could facilitate CKFG-FM's regulatory compliance in the future.
45. Approving the transaction would ensure that the Toronto market continues to benefit from a diversity of programming. By sharing the perspectives of Toronto's Caribbean and African communities via the broadcast of its spoken word and news programming, the station would, in keeping with subparagraph 3(1)(d)(ii) of the Act, contribute to providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity. It would also serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada and encourage the development of Canadian expression by providing a wide range of programming, in keeping with subparagraph 3(1)(d)(i) of the Act.
46. The Commission notes the multiple commitments made by the applicant with regard to hiring members of the Caribbean and African communities in key positions. Accordingly, the Commission is of the view that the station would remain a platform helping to launch the careers of members of the Caribbean and African communities as artists or in roles related to media sales, programming, news, administration or promotion.
47. In addition, the station would promote a diversity of editorial voices and provide an opportunity for the public expression of differing views on matters of public concern in keeping with subparagraph 3(1)(i)(iv) of the Act. It would also serve the needs and interests and reflect the circumstances and aspirations of Canadians, including the multicultural and multiracial nature of Canadian society, in keeping with subparagraph 3(1)(d)(iii) of the Act.
48. Moreover, approval of this transaction would contribute to the financing, development, availability and promotion of high quality Canadian music and other creative material through the contributions that 278 Limited would be required to devote to tangible benefits and Canadian content development (CCD). The amounts paid would directly benefit Radio Starmaker Fund, FACTOR and the Community Radio Fund of Canada (CRFC) at a time when the broadcasting industry has been majorly affected by the COVID-19 pandemic.
49. Accordingly, the Commission finds that approval of the transaction would provide substantial benefits to the broadcasting system and, more specifically, to the Caribbean and African communities that the station was originally licenced to serve.
50. Nevertheless, the Commission is of the view that additional safeguards are appropriate in light of the concerns raised by the interveners and the petitioners regarding the reflection of the Caribbean and African communities of Toronto in the programming of the station and the involvement of members of these communities in the operations of the station.

51. In addition, the Commission considers it appropriate to amend the terms and conditions of licence for the station to ensure transparency and accountability regarding CKFG-FM's reflection of the Caribbean and African communities in its programming and employment practices.
52. In Broadcasting Decision 2011-369, in which Intercity was originally authorized to operate the station now known as CKFG-FM, the Commission imposed a condition of licence (specifically, condition of licence 7 set out in the appendix to that decision) requiring the licensee to report on the manner in which it had fulfilled its requirement to serve the Caribbean and African communities of Toronto with its spoken word programming and musical format to ensure that the station would provide an adequate reflection of those communities.
53. 278 Limited indicated that it would adhere to an additional condition of licence that would require it to detail the manner in which it fulfilled its commitment to serve the station's Caribbean and African communities through the station's operations and programming roles in light of its employment practices. In the applicant's view, the imposition of these reporting obligations alongside the station's conditions of licence relating to programming would ensure that CKFG-FM continues to fulfil its mandate.
54. The Commission considers that the original reporting requirements imposed through conditions of licence remain appropriate. However, the Commission also finds it appropriate to strengthen such reporting to further emphasize the importance that the Commission places on maintaining the station's original mandate.
55. Therefore, and to ensure transparency and accountability to the Caribbean and African communities of Toronto, the Commission imposes the following condition of licence:

**8.** The licensee is required to file an annual report by 30 November of each year providing:

- a) Specific details on the manner in which it has fulfilled its programming requirements to serving the Caribbean and African communities of Toronto with its spoken word programming and musical format. This report must also explain the steps taken by the licensee to ensure that the programming reflects the realities, point of views, talents and interests of those communities.
- b) Specific details on the manner in which it has fulfilled its commitment to serving the Caribbean and African communities in the station's operations and programming roles in light of its employment practices as well as how the programming decisions related to serving the Caribbean and African communities of Toronto were considered and implemented.

The report must include specific information about the manner in which the Caribbean and African communities of Toronto are represented in key positions, including decision-making positions, such as station manager, programming director, music director, news director,

journalists and on-air hosts. The report must also explain the measures taken by the licensee to fulfill these positions.

- c) With respect to a) and b), the Commission expects the licensee to consult with the communities on an annual basis. The licensee must include in its annual report how it consulted with the Caribbean and African communities of Toronto, with whom it consulted and what feedback the licensee has received from the communities (through consultation or otherwise) on its fulfillment of these conditions.

56. Considering the importance of this report in enabling the Caribbean and African communities to evaluate whether CKFG-FM reflects their viewpoints in the station's operations and programming, the Commission is of the view that this report must be made available to the public. Given the nature of some of the information that would be included in the report, the Commission adds the following to the condition of licence.

- d) In addition to the confidential report filed with the Commission with specific information regarding employment, the licensee must file with the Commission a public version of this report, with aggregated employment data, that would be posted on the Commission's website. The licensee must also make a public version of the report available, as of 30 November of each year, on the station's website.

57. The Commission is of the view that this condition of licence, together with other conditions of licence, will address the concerns expressed by the intervenors and will ensure that the applicant meets its commitments related to serving the Caribbean and African communities of Toronto will be implemented. The condition of licence will also better enable these communities to evaluate the licensee's performance in regard to these commitments and facilitate their ability to provide comments as part of a future licence renewal proceeding. Furthermore, requesting that the licensee report on its consultations with the Caribbean and African communities of Toronto will allow the Commission to assess how the licensee engaged with those communities and to obtain information about the feedback they provide, either through the consultation process or unsolicited feedback provided directly to the station. The Commission is satisfied that such a requirement will allow it to assess, as part of a future licence renewal process, whether 278 Limited fulfilled its commitments, and whether additional regulatory measures are required to ensure adequate reflection of these communities.

58. In light of the above, with the imposition of additional safeguards, the Commission **determines** that the transaction serves the public interest.

59. One intervener submitted that the applicant should be required to ensure that the majority of the licensee's board of directors be composed of Black individuals. On this matter, the Commission notes that, as a general practice, at least in regard to commercial radio stations, it does not impose requirements relating to the

composition of a radio station's board of directors, except for those required to ensure compliance with the *Direction to the CRTC (Ineligibility of non-Canadians)*. Accordingly, the Commission does not consider that such a requirement is appropriate.

### **CKFG-FM Format**

60. The station's current conditions of licence require it to broadcast as a specialty service and require that at least 50% of all musical selections broadcast in each week be devoted to world beat and international music. An intervener expressed the view that these conditions of licence are counterproductive and limit the proportion of that station's programming that can be devoted to hip hop and R&B by Black artists who enter the music charts and are therefore classified as Pop music.
61. The intervener requested that the Commission create a content category or subcategory titled "Black Voices" and require the station to broadcast a minimum amount of programming from that category. The intervener added that, in his view, the station should have been required to broadcast "Black Voices" rather than "World Beat" programming but was precluded from doing so by the fact that there is no such category. Therefore, in his opinion, the Commission should create a "Black Voices" content category or subcategory to allow the Black community to have its own broadcast voice.
62. The applicant cited that the music mix and format of the station encompass a range of styles (such as R&B, soul, reggae, Soca, hip hop, world beat, gospel and smooth jazz) that serve to reflect the Caribbean and African communities of Toronto. Nonetheless, the applicant noted the comments made by the intervener regarding the limitation currently placed on CKFG-FM regarding the level of "charted" music by Black artists that the station can broadcast. In this regard, it mentioned that its objective was to build a record of regulatory compliance, but that its intention was to review afterward the limitations on music from Black artists.
63. The Commission notes that the condition of licence currently imposed on CKFG-FM, which requires it to ensure that at least 50% of the musical selections that it broadcasts in each broadcast week are drawn from content subcategory 33 (World beat and international), still allows for the remaining 50% of the musical selections that it broadcasts to be drawn from other categories, such as content category 2 (Popular Music), which includes hip hop and R&B. Moreover, this condition of licence was proposed by Intercity as part of its original application to operate the station, and it was taken into consideration by the Commission in Broadcasting Decision 2011-369 when it assessed whether the station proposed by Intercity would benefit the Caribbean and African communities of Toronto. In addition, the applicant accepts to abide by this condition of licence. Accordingly, the Commission considers that CKFG-FM's current condition of licence relating to the broadcast of musical selections drawn from content subcategory 33 remains appropriate.

64. In regard to the proposed creation of a “Black Voices” category or subcategory, the Commission considers that this matter is beyond the scope of this proceeding.

### **Programming in third languages**

65. The Commission received an intervention from CIRC Radio, the licensee of CIRV-FM Toronto, an ethnic radio programming undertaking in Toronto. CIRC Radio stated that should this application be approved, it could negatively impact CIRV-FM and other licensed ethnic broadcasters who serve the Greater Toronto Area. Therefore, CIRC Radio submitted that if the application is approved, 278 Limited should be prohibited from broadcasting programming in Hindi, Punjabi and Urdu and that a condition of licence should be imposed to that effect.

66. The applicant submitted that the third-language restrictions requested by CIRC Radio would be unreasonable unless a similar condition of licence was also imposed on its competitors since section 7 of the *Radio Regulations, 1986* (the Regulations) permits non-ethnic commercial radio stations to broadcast up to 15% of their programming in any third language.

67. The Commission is of the view that the record of this proceeding contains no evidence to justify the imposition of a limit on the third-language ethnic programming that CKFG-FM can broadcast. Therefore, in accordance with section 7 of the Regulations, CKFG-FM is permitted to devote up to 15% of its programming in each broadcast week to third-language programs without prior approval from the Commission.

### **Value of the transaction and tangible benefits**

68. The Commission's policy regarding the payment of tangible benefits is set out in Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy). As stated in that regulatory policy, the payment of tangible benefits serves the public interest by, among other things, increasing the quantity and quality of Canadian programming and providing increased support for the creation, distribution and promotion of such programming. The Commission generally requires the payment of tangible benefits as part of a change in the effective control of commercial radio stations.

69. For the purpose of calculating the value of the tangible benefits, the Commission takes into account the value of the transaction as a whole, including the value of the gross debt, working capital to be transferred at closing, ancillary agreements, any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities. The Commission's practice is to calculate the value of the leases over a five-year period. These elements, if applicable, are added to the purchase price.

70. Pursuant to the Asset Purchase Agreement, 278 Limited would purchase CKFG-FM's assets for \$5,000,000. The applicant initially proposed a value of the transaction of \$5,888,000, which included a combined value of \$888,000 for the station's studio and

transmitter leases. The applicant subsequently revised the value of these leases to \$1,232,235 and proposed a revised value of the transaction of \$6,232,235.

71. Although the licensee calculated the value of each of the assumed leases over a five-year period, the values of the leases were calculated over different timeframes (i.e., 2018 through 2023 and 2021 through 2025). The Commission is of the view that the value of all leases must be calculated for the next five-year period (from 2021 to 2025).
72. The Commission has therefore revised the value of the leases according to Commission practice and has established the value of the transaction at \$6,250,574, as follows:

<b>Item</b>	<b>Amount</b>
Purchase price	\$5,000,000
<b>Adjusted purchase price</b>	<b>\$5,000,000</b>
Leases	\$1,250,574
<b>Value of the transaction</b>	<b>\$6,250,574</b>

73. Pursuant to the Tangible Benefits Policy, tangible benefits for a change to the ownership and effective control of commercial radio stations must generally represent at least 6% of the value of the transaction as determined by the Commission, to be allocated to the Radio Starmaker Fund or Fonds Radiostar (3%), FACTOR or Musicaction (1.5%), eligible CCD initiatives at the discretion of the purchaser (1%) and the CRFC (0.5%).
74. Based on the revised value of the transaction that it proposed and filed, specifically, \$6,232,235, as specified in paragraph 70 above, 278 Limited proposed a tangible benefits package of \$373,934, which is equal to 6% of \$6,232,235, to be spent over seven broadcasting years. The applicant also proposed to direct the contributions that it would be permitted to allocate to any eligible CCD initiative (i.e., \$62,322) to “the establishment of scholarships targeted at supporting Black students enrolled in an accredited journalism or music program at a post-secondary institution (the ‘CKFG Scholarship Fund’).”
75. Based on the revised value of the transaction as set out in paragraph 72 above, specifically, \$6,250,574, and consistent with the Tangible Benefits Policy, the Commission **directs** 278 Limited to pay tangible benefits amounting to \$375,035, to be allocated as follows in equal annual payments over seven consecutive broadcast years:

- 3% (\$187,517) to Radio Starmaker Fund or Fonds Radiostar;
- 1.5% (\$93,759) to FACTOR or Musicaction;
- 1% (\$62,506) to any eligible CCD initiative at the discretion of the purchaser; and
- 0.5% (\$31,253) to the CRFC.

76. Although the spending of the funds that can be allocated to any eligible CCD initiative is left to the discretion of the licensee, the Commission encourages 278 Limited to direct \$62,506 (1% of the value of the transaction) to eligible third-party recipients from the Caribbean and African communities in Toronto as proposed.

### **Terms and conditions of licence**

77. When an application for transfer of assets is approved, a new licence is issued to the purchaser once the seller returns its licence to the Commission. The terms and conditions of this new licence are set out in the decision approving the transaction, and are determined based on the former licensee's compliance with its regulatory obligations.
78. 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 number, recurrence and seriousness of the instance of non-compliance. The circumstances, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.
79. In addition to considering the former licensee's performance, the Commission may consider the ability of the purchaser to abide by its regulatory obligations and the measures it will implement to ensure future compliance. In some cases, the Commission may elect to impose additional conditions of licence.
80. When asked to comment on the station's performance, 278 Limited indicated that it did not have direct knowledge of the circumstances surrounding the station's apparent non-compliance, but that it was aware of and acknowledged them. 278 Limited added that its owner Neeti Ray is an experienced radio broadcaster with the ability to put CKFG-FM on a secure financial footing and ensure that the station is operated in compliance with its regulatory requirements.
81. 278 Limited was also asked to comment on the possibility of the Commission, if it were to find Intercity in non-compliance with its requirements, and depending on the extent of such non-compliance, imposing corrective measures, such as requiring the broadcast of an on-air announcement, issuing mandatory orders, or revoking or not renewing CKFG-FM's broadcasting licence. These measures were being considered in light of possible instances of serious and recurring non-compliance by Intercity with various requirements, such as CKFG-FM's conditions of licence relating to the broadcast of musical selections from content subcategory 33 (World beat and

international) and spoken word/news programming, CCD contributions required to cover shortfalls from the station's first licence term, and the filing of annual programming reports, subsections 15(2), 15(5) and 9(4) of the Regulations, which require Intercity to make CCD contributions and respond to Commission inquiries regarding compliance with its regulatory obligations, as well as the shortfall in the annual payment of Part I and Part II licence fees, as per section 3 of the *Broadcasting Licence Fee Regulations, 1997*.

82. The applicant submitted that no additional measures should be imposed in regard to any findings of non-compliance with the station's conditions of licence relating to the broadcast of musical selections from content subcategory 33 (World beat and international) and to the submission of annual programming reports. It added that any such measures could undermine confidence in the station's operations and negatively impact its already fragile financial condition. Further, the station's difficulties with its financial obligations and regulatory requirements have already been made public. The applicant added that the station's possible non-compliance with its requirement to submit annual programming reports was related to the disruption in management that followed the passing of Fitzroy Gordon, and that Intercity had implemented concrete measures to ensure future compliance with its requirement to broadcast musical selections from content subcategory 33 (World beat and international).
83. In regard to Intercity's possible non-compliance relating to unpaid CCD contributions, which were required to cover a shortfall in the station's first licence term and which currently total \$59,903, the applicant stated that it would not object to the imposition of a condition of licence requiring that these contributions be made. It added, however, that no additional measures should be imposed nor any additional CCD contributions required. In the applicant's view, such measures would undermine confidence in the station's operations and negatively impact its fragile financial state. Moreover, the applicant was of the opinion that, since it would pay the outstanding shortfall in CCD contributions and contribute significantly to the broadcasting system by paying tangible benefits, if the Commission approved this application, any requirement that it pay additional CCD contributions would be unduly punitive.
84. As for the possible issuance of mandatory orders, the applicant indicated that this would be a deterrent for any purchaser and could undermine its efforts to bring the station into compliance. It added that closing of the transaction is conditional on its application being approved on the terms applied for, and that it would have to carefully evaluate whether or not to proceed if mandatory orders were to be imposed.
85. As for the possible revocation or non-renewal of CKFG-FM's licence, the applicant submitted that a revocation would result in profound harm to the underserved Black communities of Toronto, including those of Caribbean and African heritage. In the applicant's view, a revocation or a non-renewal of the station's licence would not be in the public's best interest.

86. The applicant also commented on Intercity's possible non-compliance with section 3 of the *Broadcasting Licence Fee Regulations, 1997* relating to the annual payment of Part I and Part II licence fees (payment of which is required pursuant to section 11 of the Act). In its letter dated 2 February 2021, the applicant submitted that, under the receivership arrangements that are currently in place, the station's outstanding licensing fees of \$27,454 represent a debt owed to a creditor of Intercity but that its outstanding CCD contributions, which would be directed to third-party recipients, do not. As such, in 278 Limited's view, a requirement to pay outstanding licensing fees would be qualitatively different from a requirement to pay outstanding CCD amounts, and, further, could undermine the receivership arrangements and creditor process that are currently in place. Nonetheless, 278 Limited indicated that it would be willing to fulfil such a requirement in the event that the Commission deemed it a necessary condition for approval of this application.

87. As previously mentioned, the Commission elected to address Intercity's licence renewal application in a separate decision also published today, namely, *Broadcasting Decision 2021-276*. In that decision, the Commission assessed CKFG-FM's compliance with its regulatory requirements during the current licence term, which expires 31 August 2021, and found Intercity to be in non-compliance with the following:

- its reporting requirements, specifically:
  - serious and recurrent non-compliance with its condition of licence relating to the filing of annual programming reports (i.e., condition of licence 8 set out in the appendix to *Broadcasting Decision 2018-325*), as well as
  - non-compliance with subsection 9(4) of the Regulations, which requires the licensee to respond to Commission requests for information and with which the Commission considers non-compliance to be very serious in nature;
- its CCD contribution requirements, specifically:
  - recurrent non-compliance with sections 15(2) and 15(5) of the Regulations relating to the requirement to make basic annual contributions to eligible CCD initiatives, as well as
  - very serious and recurrent non-compliance with its condition of licence relating to CCD contributions required to cover shortfalls from the previous licence term (i.e., condition of licence 6 set out in paragraph 14 of *Broadcasting Decision 2020-79*);
- its programming requirements, specifically:
  - very serious and recurrent non-compliance with its condition of licence relating to the broadcast of musical selections from content subcategory 33

(World beat and international) (i.e., condition of licence 3 set out in the appendix to Broadcasting Decision 2018-325),

- non-compliance with its condition of licence relating to the broadcast of spoken word programming (i.e., condition of licence 4 set out in the appendix to Broadcasting Decision 2018-325), and
  - very serious non-compliance with its condition of licence relating to the broadcast of news (i.e., condition of licence 5 set out in the appendix to Broadcasting Decision 2018-325); and
- section 3 of the *Broadcasting Licence Fee Regulations, 1997* relating to the annual payment of Part I and Part II licence fees, payment of which is required pursuant to section 11 of the Act.

88. In light of CKFG-FM's serious and recurrent non-compliance during its second licence term, the Commission, in Broadcasting Decision 2021-276, determined that it was appropriate to grant Intercity a short-term renewal of the broadcasting licence for the station (from 1 September 2021 to 31 August 2024), impose additional conditions of licence (including a condition of licence requiring Intercity to broadcast an on-air announcement), and issue mandatory orders. The licence renewal granted in Broadcasting Decision 2021-276 will allow CKFG-FM to continue its operations in the event that the close of the transaction addressed in this decision takes place after 31 August 2021, or in the event that the parties fail to close this transaction.

89. Given that terms and conditions for new radio licensees in the period immediately following an acquisition are generally based on the former licensee's compliance with its regulatory obligations, the Commission considers it appropriate to grant 278 Limited, upon the close of the transaction and the surrender of the broadcasting licence issued to Intercity, a short-term licence renewal until 31 August 2024. This will provide 278 Limited with an incentive and an earlier opportunity to demonstrate its compliance.

90. In regard to Intercity's unpaid CCD contributions, the Commission notes that 278 Limited, in its application, proposed to pay the outstanding contributions by making the following payments:

- \$59,903 to CCD on the close of the transaction to cover the outstanding shortfalls from the previous licence term (condition of licence 6 as last amended in paragraph 14 of Broadcasting Decision 2020-79). Intercity reduced the amount of its outstanding contributions of \$72,060 by making a payment of \$12,155 on 18 February 2020. The shortfall is now \$59,903; and
- \$72,060 to CCD on the close of the transaction 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 (condition of licence 7 as last amended in paragraph 14 of Broadcasting Decision 2020-79).

The Commission considers it appropriate to require that 278 Limited make the outstanding CCD contributions of \$59,903 and \$72,060 within the 60-day period following the close of the transaction. **Conditions of licence** to that effect are set out in the appendix to this decision.

91. 278 Limited also proposed to pay the outstanding contributions of \$39,000 to FACTOR on the close of the transaction 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 (condition of licence 9 as last amended in paragraph 14 of Broadcasting Decision 2020-79). Intercity has since paid the outstanding contribution of \$39,000 on time on 28 February 2021. There is therefore no outstanding payment related to the \$39,000 shortfall to be made by 278 Limited.
92. As for the unpaid Part I and Part II license fees, the applicant understands 278 Limited's regulatory obligation to pay such fees and has committed to do so. As a result, the Commission does not consider it necessary to impose a condition of licence requiring 278 Limited to pay these outstanding fees as part of this decision.
93. Notwithstanding that terms and conditions for new radio licensees in the period immediately following an acquisition are generally based on the former licensee's compliance, the Commission also considers the ability of the purchaser to abide by its regulatory obligations as well as the measures that it will implement to ensure future compliance. Neeti Ray is an experienced broadcaster with a demonstrated ability to operate radio stations in compliance with their requirements. Moreover, in the Commission's view, this transaction should bring financial stability to CKFG-FM. Therefore, the Commission does not consider it appropriate to impose additional regulatory measures as part of the current decision, such as imposing additional conditions of licence relating to additional CCD contributions or the broadcast of an on-air announcement or issuing mandatory orders.

## **Conclusion**

94. In light of all of the above, the Commission **approves** the application by 2784486 Ontario Limited for authority to acquire from Intercity Broadcasting Network Inc. the assets of the English-language commercial (specialty) radio station CKFG-FM Toronto.
95. Further, the Commission **directs** 278 Limited to pay tangible benefits in the amount of \$375,035 over seven consecutive broadcast years and to submit acceptable proofs of payment.
96. 278 Limited shall notify the Commission of the close of the transaction, and upon surrender of the current licence issued to Intercity, the Commission will issue a new broadcasting licence to 278 Limited, which will expire 31 August 2024. The terms and **conditions of licence** for this station are set out in the appendix to this decision.

## Reminders

97. Pursuant to section 22 of the Act, the broadcasting licence issued in this decision will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry lapses.
98. It is important that radio station licensees make their required contributions to CCD, given that CCD initiatives not only help to develop and advance the careers of emerging Canadian artists, but increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. The non-payment of CCD contributions therefore has the potential to cause harm to the Canadian broadcasting system. It is incumbent upon licensees to provide, by the required deadlines, proof of payment to such initiatives. They must also provide sufficient documentation to support the eligibility of their contributions. Failure to do so may result in the Commission finding a contribution ineligible, which in turn may affect a station's compliance with regulatory obligations. Moreover, licensees must ensure that expenditures are not self-serving – that is, beneficiaries must be independent of licensees.
99. Licensees are required to provide, upon Commission request, information regarding their adherence to regulatory and other requirements. Failure to respond to the Commission's inquiries could lead to non-renewal or revocation of the licensee's broadcasting licence.
100. Should the licensee continue to be in non-compliance with its regulatory requirements during the next licence term, the Commission may consider recourse to additional measures, including the issuance of a mandatory order, or the revocation or non-renewal of the licence.

Secretary General

## Related documents

- *CKFG-FM Toronto – Licence renewal, licence amendment and issuance of mandatory orders*, Broadcasting Decision CRTC 2021-276 and Broadcasting Orders CRTC 2021-277 and 2021-278, 12 August 2021
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2021-114, 22 March 2021
- *CINA Mississauga – Licence renewal and licence amendment*, Broadcasting Decision CRTC 2020-403, 17 December 2020
- *CKFG-FM Toronto – Licence amendments*, Broadcasting Decision CRTC 2020-79, 28 February 2020
- *CKFG-FM Toronto – Licence renewal and amendment*, Broadcasting Decision CRTC 2018-325, 28 August 2018

- *CKIN-FM Montréal – Licence renewal*, Broadcasting Decision CRTC 2017-244, 10 July 2017
- *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
- *CINA-FM Windsor – Licence renewal*, Broadcasting Decision CRTC 2014-267, 23 May 2014
- *English-language FM radio station in Toronto*, Broadcasting Decision CRTC 2011-369, 9 June 2011

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

## Appendix to Broadcasting Decision CRTC 2021-275

### Terms, conditions of licence, expectation and encouragements for the English-language commercial (specialty) radio station CKFG-FM Toronto, Ontario

#### Terms

The licence will expire 31 August 2024.

#### Conditions of licence

1. The licensee shall adhere to the conditions of licence 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 *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000, and *A review of certain matters concerning radio*, Public Notice CRTC 1995-60, 21 April 1995.
3. The licensee shall devote at least 50% of all musical selections broadcast in each broadcast week to programming drawn from content subcategory 33 (World beat and international).
4. During each broadcast week, the licensee shall devote a minimum of 10% of its programming to spoken word programming consisting of news, surveillance and in-depth discussion on issues relating to and affecting local communities.
5. During each broadcast week, the licensee shall broadcast a minimum of 5 hours and 40 minutes of news.
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 \$59,903 to CCD by no later than **60 days after the closing of the transaction** to cover the remaining balance of outstanding shortfalls from the station's first licence term that were not made up during the station's second licence term, with supporting documentation (including sufficient proof of payment and eligibility) to be submitted to the Commission by no later than the following **30 November** following the broadcast year in which the CCD contributions are made.

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, the licensee shall make a contribution of \$72,060 to CCD by no later than **60 days after the closing of the transaction** to cover the outstanding balance in contributions that, as stated in condition of licence 7 set out in the appendix to *CKFG-FM Toronto – Licence renewal and amendment*, Broadcasting Decision CRTC 2018-325, 28 August 2018, were required to remedy the harm caused to the Canadian broadcasting system by Intercity’s non-compliance with its regulatory obligations relating to CCD during CKFG-FM’s first licence term, with supporting documentation (including sufficient proof of payment and eligibility) to be submitted to the Commission by the following **30 November** following the broadcast year in which the CCD contributions are made.

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.

8. The licensee is required to file an annual report by **30 November** of each year providing:
- a. specific details on the manner in which it has fulfilled its programming requirements to serving the Caribbean and African communities of Toronto with its spoken word programming and musical format.  
This report must also explain the steps taken by the licensee to ensure that the programming reflects the realities, point of views, talents and interests of those communities.
  - b. specific details on the manner in which it has fulfilled its commitment to serving the Caribbean and African communities of Toronto in the station’s operations and programming roles in light of its employment practices as well as how the programming decisions related to serving the Caribbean and African communities of Toronto were considered and implemented.  
This report must include specific information about the manner in which the Caribbean and African communities of Toronto are represented in key positions, including decision-making positions, such as station manager, programming director, music director, news director, journalists and on-air hosts. The report must also detail the measures taken by the licensee to fulfill these positions.
  - c. With respect to a) and b), the Commission expects the licensee to consult with the communities on an annual basis. The licensee must include in its annual report how it consulted with the Caribbean and African communities of Toronto, with whom it consulted and what feedback the licensee has received from the communities (through consultation or otherwise) on its fulfillment of these conditions.

- d. In addition to the confidential report filed with the Commission with specific information regarding employment, the licensee must file with the Commission a public version of this report, with aggregated employment data, that will be posted on the Commission's website. The licensee must also make a public version of the report available, as of **30 November** of each year, on the station's website at an easily accessible location.
9. The licensee shall meet the objectives and intent of the Commission's policy framework relating to the broadcast of montages set out in *Requirements for the broadcast of radio montages*, Broadcasting Information Bulletin CRTC 2011-728, 24 November 2011, and shall devote no more than 10% of all programming broadcast during a broadcast week to montages.

For the purposes of this condition of licence, the terms "broadcast week" and "montage" 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 and give prominence to members of the Caribbean and African communities of Toronto in its programming and employment practices.

### **Encouragements**

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.

The Commission encourages the licensee to direct the discretionary (1%) of its tangible benefits to eligible third party recipients to the Caribbean and African communities of Toronto.