



Broadcasting Decision CRTC 2018-325

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Reference: 2018-16

Ottawa, 28 August 2018

Intercity Broadcasting Network Inc.
Toronto, Ontario

Public record for these applications: 2016-0920-8 and 2016-0919-0
Public hearing in the National Capital Region
27 March 2018

CKFG-FM Toronto – Licence renewal and amendment

*The Commission **renews** the broadcasting licence for the English-language commercial (specialty) radio station CKFG-FM Toronto from 1 September 2018 to 31 August 2021. This short-term licence renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.*

*The Commission **denies** the licensee's application to amend the broadcasting licence for CKFG-FM in order to reduce the portion of musical selections broadcast during each broadcast week that must be drawn from content subcategory 33 (World beat and international).*

Background

1. In Broadcasting Decision 2011-369, the Commission approved an application by Intercity Broadcasting Network Inc. (Intercity) for a broadcasting licence to operate an English-language commercial (specialty) FM radio station in Toronto, Ontario. The new station, CKFG-FM Toronto, commenced operations on 26 November 2011.
2. In Broadcasting Decision 2014-574, the Commission denied requests by Intercity to add an FM transmitter to the station and to amend the station's condition of licence relating to Canadian content development (CCD) contributions that are over-and-above the basic contributions required by section 15 of the *Radio Regulations, 1986* (the Regulations). As explained in that decision, the Commission's review of the licensee's performance revealed serious instances of non-compliance relating to the filing of annual returns and annual programming reports, basic CCD contributions and over-and-above CCD contributions. Consequently, the Commission did not consider it appropriate to approve those requests.
3. In regard to the above instances of non-compliance, the Commission expressed concern over Intercity's understanding and appreciation of the importance of adhering to its regulatory obligations. The Commission stated that the requested changes were

denied pursuant to its general practice to deny requests for such amendments when licensees are not in good standing with their regulatory obligations. Finally, the Commission stated that it would review the licensee's performance and the manner in which it had remedied the instances of non-compliance as part of the licence renewal process for CKFG-FM.

Application

4. Intercity filed an application (2016-0920-8) to renew the broadcasting licence for CKFG-FM, which expires 31 August 2018.¹
5. Intercity also filed an application (2016-0919-0) to amend the station's broadcasting licence to reduce from 50% to 37% the minimum portion of musical selections broadcast during each broadcast week that must be devoted to programming drawn from content subcategory 33 (World beat and international) as defined in Broadcasting Regulatory Policy 2010-819.
6. The Commission received interventions in support of these applications, as well as interventions commenting on the applications from Durham Radio Inc. (Durham), licensee of commercial radio stations in Ajax, Hamilton, Oshawa and Haldimand County, Ontario, and from Mr. Delford Blythe, who identified himself as a Shareholder and Director of Intercity and whom Intercity referred to as its former Vice-president and Chief Financial Officer (CFO). The Commission also received interventions in opposition to the applications from various individuals who expressed concerns over the station's compliance issues and internal disputes relating to Intercity's President, Mr. Fitzroy Gordon.

Commission's analysis and decisions

7. After examining the applications in light of applicable regulations and policies, the Commission finds that the issues it must address are the following:
 - the licensee's apparent non-compliance with various regulatory requirements; and
 - the requested licence amendment.

Licensee's apparent non-compliance with various regulatory requirements

8. In regard to the licensee's apparent non-compliance relating to the operation of CKFG-FM, the Commission has examined issues relating to the following:
 - the broadcast of Canadian content;

¹ In Broadcasting Decision 2017-224, the Commission administratively renewed the broadcasting licence for CKFG-FM from 1 September 2017 to 31 August 2018.

- the broadcast of montages;
- the broadcast of World beat and international music;
- the submission of radio monitoring materials;
- the filing of annual returns;
- the filing of annual programming reports;
- the implementation of the National Public Alerting System (NPAS);
- basic and over-and-above CCD contributions; and
- the regulatory measures to be applied in regard to any findings of non-compliance.

Broadcast of Canadian content

9. Section 2.2(3)(b) of the Regulations requires commercial radio stations to devote at least 10% of content category 3 (Special Interest Music) musical selections broadcast each broadcast week to Canadian musical selections broadcast in their entirety. Section 2.2(8) and 2.2(9) of the Regulations require such stations to devote at least 35% of content category 2 (Popular Music) musical selections broadcast each broadcast week, and between 6:00 a.m. and 6:00 p.m. from Monday to Friday of the same broadcast week, to Canadian selections broadcast in their entirety.
10. Based on an examination of the programming broadcast on CKFG-FM for the broadcast week of 15 to 21 November 2015, the Commission found that 3.81% of the content category 3 musical selections broadcast during that week were Canadian musical selections, well below the 10% regulatory minimum. Further, 13.3% of the content category 2 musical selections broadcast during that week and 14.9% of such selections broadcast between 6:00 a.m. and 6:00 p.m. from Monday to Friday of that same week were Canadian musical selections, well below the 35% regulatory minimum.
11. Intercity acknowledged that it did not meet its Canadian content obligations and expressed its disappointment at this situation. The licensee noted that it now has a much clearer understanding of its obligations, and that those obligations have been communicated internally via a full-staff meeting, one-on-one follow-up meetings with each on-air personality, and regular communications.
12. Intercity indicated that programming changes were implemented as of 27 March 2016 to ensure full compliance with its Canadian content obligations going forward. It further indicated that ongoing staff training measures have been put in place, that logs and playlists are monitored daily, and that when discrepancies occur, corrections are made before the end of the broadcast week.

13. The licensee added that a weekly, one-hour program entitled “One Hundred Percent Canadian” has been created and that the program, which airs on Monday evenings, is dedicated solely to playing Canadian content. Intercity confirmed that as a measure to address its non-compliance with Canadian programming requirements, it would accept a condition of licence requiring an additional over-and-above CCD contribution of \$20,000, to be paid over the next licence term.
14. In light of the above, the Commission finds the licensee in non-compliance with sections 2.2(3)(b), 2.2(8) and 2.2(9) of the Regulations for the 15 to 21 November 2015 broadcast week. Moreover, as provided in greater detail below, the Commission has imposed conditions of licence, set out in the appendix to this decision, relating to this finding of non-compliance, requiring the licensee to make additional CCD contributions in the 2018-2019 broadcast year.

Broadcast of montages

15. A montage is defined in the Regulations as “a compilation of one minute or more in duration containing excerpts from several musical selections but does not include a medley.” The Commission considers a montage to be a single musical selection for the purposes of evaluating a licensee’s compliance with its programming requirements.
16. Radio station licensees typically do not have conditions of licence relating to the broadcast of montages. Rather, Broadcasting Information Bulletin 2011-728 sets out the Commission’s objectives and expectations relating to the broadcast of montages. Specifically, any broadcaster that would devote more than 10% of its programming over the broadcast week to montages would have failed to meet the objectives of the regulatory framework and the intent of the policy on montages. As set out in that information bulletin, it is necessary to supervise the broadcast of montages on radio stations to ensure that licensees respect the objectives of the regulatory framework relating to French-language vocal music (FVM) and Canadian content. The Commission added that when examining a station’s musical programming, it looks at all components of that programming.
17. Based on its examination of the programming broadcast on CKFG-FM during the 15 to 21 November 2015 broadcast week, the Commission found that 79 montages, for a total duration of 23 hours, 50 minutes and 45 seconds, were broadcast on the station during that week. This represented 18.9% of the programming broadcast during the week, more than the above-noted 10% limit.
18. Intercity stated that it was not aware of the Commission’s objectives and expectations relating to the broadcast of montages, in particular the 10% limit set out in Broadcasting Information Bulletin 2011-728. It added that montages are an integral part of the way in which the Caribbean community listens to music. Nevertheless, the licensee indicated that it took immediate action to reduce the number of montages aired such that permanent measures were implemented as of 31 October 2016 to ensure that the amount of time devoted to montages was reduced to meet the

Commission's objectives and expectations. It added that it would accept a condition of licence limiting the broadcast of montages to 10% of all programming broadcast over the broadcast week.

19. In light of the above, the Commission finds that the licensee failed to meet the objectives of the Commission's regulatory framework and the intent of its policy relating to the broadcast of montages during the 15 to 21 November 2015 broadcast week. Moreover, as provided in greater detail below, the Commission has imposed a condition of licence, set out in the appendix to this decision, to ensure that the licensee meets the objectives and intent of the policy relating to the broadcast of montages.

Broadcast of World beat and international music

20. As set out in Public Notice 1995-60, radio stations operating in the specialty FM format specialize in the broadcast of, for example, ethnic programming, news or talk programming, traditional or special interest music programming, or a combination of a number of kinds of special programming. As such, they differ from stations that operate under Pop, Rock and Dance or Country formats. As noted in that public notice, the Commission considers that a separate format for specialty stations is a useful tool for increasing the diversity of programming available to listeners, among other things.
21. In regard to CKFG-FM's specialty format, Intercity, following on its own commitment, is required to devote at least 50% of the musical selections broadcast on the station during each broadcast week to content subcategory 33 (World beat and international) musical selections. This requirement was imposed by condition of licence as part of the Commission's decision to issue a broadcasting licence for the operation of the station (see condition of licence 3 set out in the appendix to Broadcasting Decision 2011-369).
22. Based on its examination of the programming broadcast on CKFG-FM during the 15 to 21 November 2015 broadcast week, the Commission found that 34% of the musical selections broadcast on the station during that week consisted of World beat and international musical selections and Non-classic religious musical selections (content subcategory 35) combined, which is less than the 50% minimum requirement for World beat and international musical selections alone.
23. Intercity noted that a major portion of World beat and international musical selections were broadcast on CKFG-FM in the form of montages. The licensee explained that it was not aware that excerpts of individual musical selections from that content subcategory aired in a montage cannot count as individual selections to fulfil its condition of licence relating to the broadcast of such musical selections.
24. The licensee indicated that it has revised its music strategy to ensure that more World beat and international musical selections are broadcast in their entirety on a daily basis, with specific hours of the broadcast week devoted to such musical selections, and with reductions in the amount of montages consisting of such musical selections.

It added that station staff have been informed of the requirements relating to the broadcast of World beat and international musical selections, and that monitoring now occurs on a daily basis to ensure full compliance.

25. In light of the above, the Commission finds Intercity to be in non-compliance with CKFG-FM's condition of licence relating to the broadcast of content subcategory 33 musical selections on the station for the 15 to 21 November 2015 broadcast week.

Filing of radio monitoring materials

26. Section 8(1) of the Regulations sets out requirements relating to keeping and retaining program logs or records of matters broadcast by licensees on their radio station, and to entering specific information for each broadcast day (for example, program titles and descriptions, the relevant content category for the selection broadcast, the time of broadcast, the origin of the program and any non-Canadian programming, and information regarding the broadcast of commercial messages).
27. Section 9(3)(b) of the Regulations sets out the requirement for radio station licensees to submit to the Commission a list of the musical selections broadcast on a station, in the order in which they are broadcast, with specific information to be identified for each musical selection (specifically, the title and performer of each musical selection, any Canadian musical selection, any hit, any instrumental selection, or any content category 3 selections, and the language of the musical selection where the musical selection is not an instrumental selection).
28. Based on its examination of the programming broadcast on CKFG-FM during the 15 to 21 November 2015 broadcast week, the Commission found that the program log and music list filed by Intercity were incomplete and did not accurately reflect the content broadcast on the station as provided in the audio recordings. In particular, 78 of the musical selections aired were not identified in the music list or program log filed by Intercity, and 34 of the musical selections identified in the music list and program log filed by Intercity were not aired during the week in question.
29. Moreover, there were various deficiencies in regard to the information provided in the music list filed by the licensee. These related to, among other things, the identification of Canadian musical selections and instrumental selections, and the content category and language of selections, all of which required clarification.
30. Intercity stated that the submission of radio monitoring materials for the broadcast week in question was its first and only submission of this type to the Commission. It admitted that it was not fully aware of its regulatory obligations relating to radio monitoring materials, but that it now understands its obligations in this regard.
31. The licensee indicated that a new template has been developed to track songs that are aired so as to ensure that the station's logs are complete and accurate going forward. It added that on-air staff and DJs are sent reminders on a weekly basis to file their playlists to a music coordinator, and that a music manager is now responsible for auditing playlists, with adjustments to be made as required.

32. In light of the above, the Commission finds the licensee in non-compliance with sections 8(1) and 9(3)(b) of the Regulations for the 15 to 21 November 2015 broadcast week.

Filing of annual returns

33. As set out in section 9(2) of the Regulations, radio station licensees are required to file annual returns, including financial statements, on or before 30 November of each year for the broadcast year ending the previous 31 August. Details on the specific filing requirements for annual returns are set out in Broadcasting Information Bulletin 2011-795.
34. In Broadcasting Decision 2014-574, in which the Commission denied Intercity's request for technical changes to CKFG-FM and an amendment to its condition of licence relating to over-and-above CCD contributions, the Commission noted that the licensee filed the annual returns for CKFG-FM for the 2011-2012 and 2012-2013 broadcast years after the prescribed 30 November deadline. The Commission indicated that it would review Intercity's performance and the manner in which it has remedied its non-compliance as part of the present licence renewal for the station.
35. Intercity acknowledged that the annual returns were not prepared and filed according to the regulatory requirements. The licensee explained that there was a lack of oversight in preparing and filing the station's annual returns. It added that a new CFO has been hired, who reports directly to the President and who will sign-off on all reports filed with the Commission.
36. In light of the above, the Commission finds the licensee in non-compliance with section 9(2) of the Regulations for the 2011-2012 and 2012-2013 broadcast years.

Filing of annual programming reports

37. In Broadcasting Decision 2011-369, the Commission stated that the service proposed by Intercity would add cultural and racial diversity and would benefit the Caribbean and African communities of Toronto with its spoken word programming and music format. Consequently, the Commission imposed the following condition of licence relating to the filing of annual programming reports for the new station to be operated by Intercity:

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.

38. In Broadcasting Decision 2014-574, the Commission noted that Intercity had filed the reports for the 2011-2012 and 2012-2013 broadcast years after the prescribed 30 November deadline. Further, the reports were only filed after the licensee was questioned on the non-compliance by Commission staff.

39. Following the issuance of Broadcasting Decision 2014-574, it appeared that Intercity was once again in non-compliance with the same condition of licence given that the annual programming reports for the 2013-2014 through 2015-2016 broadcast years appeared to be missing.
40. Intercity provided copies of the programming reports for the 2013-2014 through 2015-2016 broadcast years. Mr. Blythe, in his intervention, included a copy of the programming report for the 2013-2014 broadcast year along with proof that this report was filed to the Commission on 1 December 2014. However, the programming report for the 2014-2015 broadcast year was filed late, on 30 November 2016, one year after the 30 November 2015 deadline. Intercity indicated that a music manager is now responsible for preparing these reports and that the President will sign-off on all reports filed to the Commission.
41. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to the filing of annual programming reports, for the 2011-2012, 2012-2013 and 2014-2015 broadcast years.
42. Intercity will continue to be required, by condition of licence, to file annual programming reports by 30 November of each year. These reports must provide specific details on how the licensee has fulfilled its programming requirements in serving the Caribbean and African communities of Toronto with its spoken word programming and musical format for the broadcast year ending the previous 31 August. A **condition of licence** to that effect is set out in the appendix to this decision.

Implementation of the National Public Alerting System

43. In Broadcasting Regulatory Policy 2014-444, the Commission announced amendments to the Regulations and certain exemption orders that would require radio broadcasters in Canada to participate in the NPAS. Section 16 of the Regulations sets out the requirements relating to radio licensees' participation in the NPAS. As noted in sections 16(2) and 16(3) of the Regulations, all commercial radio stations (including ethnic and specialty stations) were required to implement the NPAS by 31 March 2015, whereas campus, community and Native stations were given until 31 March 2016.
44. In response to questions from Commission staff, Intercity confirmed that the NPAS was implemented on CKFG-FM on 30 March 2016, almost a full year after the deadline set out for commercial radio stations in section 16(2) of the Regulations. The licensee suggested that there was a misinterpretation of its regulatory obligations relating to the implementation of the NPAS. It submitted that it was mistaken in believing that CKFG-FM, as a commercial specialty radio station, fell into the category of a community radio station, and therefore had until 30 March 2016 to implement the NPAS.
45. Intercity indicated that a Chief Engineer, reporting directly to the President, is now responsible for ensuring proper maintenance and operation of the NPAS equipment.

46. In light of the above, the Commission finds the licensee in non-compliance with section 16(2) of the Regulations relating to the implementation of the NPAS on CKFG-FM.

Contributions to Canadian content development

47. CCD contributions are financial contributions paid by licensees of commercial (including specialty and ethnic) radio stations to initiatives that support the development and promotion of Canadian musical and spoken word content. These contributions are intended to help increase the supply of and demand for quality Canadian music and spoken word material for broadcast.
48. Section 15(2) of the Regulations requires licensees of commercial and ethnic radio stations with revenues from the previous broadcast year exceeding \$1.25 million to make basic annual CCD contributions. It also sets out the requirements for devoting minimum percentages of the basic annual CCD contributions to FACTOR or MUSICATION (45%) and the Community Radio Fund of Canada (CRFC) (15%). Unless otherwise required by a specific condition of licence, licensees are authorized to allocate the remaining amounts of basic annual CCD contributions to any eligible initiative, at their discretion. The Commission's eligibility criteria for CCD initiatives are set out in paragraphs 106 through 112 of Broadcasting Public Notice 2006-158. Among other things, beneficiaries of CCD contributions must be Canadian and must be independent of the licensee.
49. In their applications for new broadcasting licences to operate radio stations, applicants often propose CCD contributions that are over-and-above the basic contributions required by section 15 of the Regulations. As set out in Broadcasting Information Bulletin 2009-251, over-and-above CCD contributions are to be made annually, starting in the first year of operation and continuing in each subsequent broadcast year. These contributions cannot be deferred to any subsequent broadcast year unless authorized by the Commission.
50. As set out in Broadcasting Information Bulletin 2011-795, licensees are required to complete and submit with their annual returns CCD forms as well as supporting documentation demonstrating proof of payment for and the eligibility of required CCD contributions. For CCD contributions allocated to discretionary initiatives (i.e., those other than FACTOR, MUSICATION or the CRFC), licensees are required to clearly demonstrate how the particular initiative(s) meets the Commission's criteria for an eligible initiative set out in Broadcasting Public Notice 2006-158.
51. When it applied to the Commission for a broadcasting licence to operate the station that would launch as CKFG-FM, Intercity proposed to make additional CCD contributions that would exceed the required basic CCD contribution. Accordingly, in Broadcasting Decision 2011-369, the Commission imposed a condition of licence² requiring the licensee to make annual over-and-above CCD contributions totalling

² Condition of licence 6 set out in the appendix to Broadcasting Decision 2011-369

\$244,546³ over seven consecutive broadcast years, with at least 20% of that amount to be allocated to FACTOR each broadcast year. In Broadcasting Decision 2014-574, the Commission noted that Intercity had incurred a shortfall in its required CCD contributions for the 2011-2012 and 2012-2013 broadcast years. Given that the licensee did not fulfil commitments it had made to pay those shortfalls amounts, the Commission directed Intercity to provide by no later than 4 February 2015 proof of payment that the CCD shortfalls were paid.

52. Notwithstanding late contributions paid in subsequent broadcast years, and based on the supporting documentation provided by the licensee, for the period ending with the 2016-2017 broadcast year, Intercity has incurred a shortfall in its basic and over-and-above CCD contributions of \$72,060, including \$1,346 owed to the CRFC. This shortfall represents approximately 30% of the licensee's total CCD contribution requirement for the licence term up to the 2016-2017 broadcast year. The majority of that shortfall relates to CCD contributions that the licensee reported were made to discretionary initiatives. The Commission considers that these contributions are ineligible due to a combination of the licensee's inability to provide sufficient documentation to demonstrate proof of payment and/or eligibility according to the criteria set out in Broadcasting Public Notice 2006-158 and in-kind expenditures that were paid to recipients that were not independent of the licensee.
53. When questioned on the eligibility of certain CCD contributions, Intercity was unable to confirm and clearly demonstrate with evidence its independence from, and the Canadian status of, certain recipients. It also failed to clearly demonstrate how contributions for concert showcases and scholarships were used to support Canadian artists and students specifically enrolled in a full program for journalism, broadcast journalism and/or music courses.
54. Intercity acknowledged that it chose not to make any CCD contributions during its first two years of operation due to financial challenges, and that the first CCD contributions for the station were made for the 2013-2014 broadcast year. The licensee added that its personnel did not properly enforce the payment of its CCD contributions. Intercity further stated that it mistakenly thought that proof of payment would be sufficient for the Commission to determine eligibility, and confirmed that several recipients of reported CCD contributions were not independent of the licensee (for example, on-air personalities or DJs of CKFG-FM).
55. Intercity further acknowledged that in reporting CCD contributions, it did not separate basic and over-and-above CCD contributions. However, it claimed that it had exceeded its required contributions for the 2011-2012 through 2015-2016 broadcast years by \$8,634 and, therefore, that the imposition of a condition of licence requiring the licensee to rectify the above-noted shortfall is not required. The licensee added that it has put new personnel in place to manage CCD contributions for CKFG-FM

³ The amount of \$249,545 set out in that condition of licence was incorrect. After the Commission informed Intercity of the error, the licensee confirmed in a letter dated 1 March 2017 its understanding of the error and of the correct total over-and-above CCD contribution amount.

along with implementing a system to separate its basic and over-and-above CCD contributions, and that the President will be responsible for overseeing and approving all CCD expenditures. In the event the Commission were to find a shortfall in its reported CCD contributions, Intercity confirmed that it would seek to make the necessary restitution and comply with the requirements.

56. Based on the responses received from Intercity, the Commission is not convinced that the licensee fully understands or appreciates its regulatory obligations relating to CCD contributions, particularly those relating to the filing of sufficient documentation demonstrating proof of payment and adherence to the Commission's eligibility criteria for discretionary initiatives, set out in Broadcasting Public Notice 2006-158.
57. In light of the above, the Commission finds Intercity in non-compliance with sections 15(2) and 15(5) of the Regulations and with its condition of licence relating to over-and-above CCD contributions for the 2011-2012 through 2015-2016 broadcast years. Moreover, as provided in greater detail below, the Commission has imposed conditions of licence in regard to this finding of non-compliance, set out in the appendix to this decision, requiring the licensee to rectify the outstanding shortfall by paying the shortfall amount, and to make additional CCD contributions in the 2018-2019 broadcast year to compensate for the harm caused to the broadcasting system.

Regulatory measures

58. 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 leading to the non-compliance, the arguments provided by the licensee and the actions taken to rectify the situation are also considered. In that information bulletin, the Commission noted that depending on the nature of the non-compliance, and on a case-by-case basis, it may apply measures including a short-term licence renewal, the imposition of conditions of licence or mandatory orders, or the non-renewal, suspension or revocation of the licence.

Length of licence term

59. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. Annual returns are key monitoring components; they contribute to an authoritative source of statistics on the Canadian broadcasting industry for all stakeholders, and allow the Commission to effectively assess, supervise, and regulate the radio broadcasting industry as a whole. Along with complete and accurate radio monitoring materials, annual returns enable the Commission to monitor a licensee's performance and compliance with regulations and conditions of licence. The particular requirement for CKFG-FM to file annual programming reports also allows the Commission to assess, on an on-going basis, Intercity's commitments to ensure

that the local Caribbean and African communities of Toronto are well-served by the station.

60. Licensees that do not file annual returns or requested material in a timely manner, file incomplete material, or do not file such material at all therefore affect the Commission's ability to adequately perform its duty to independently confirm the licensee's adherence to regulatory and licence requirements. These filings also become important indicators of whether a licensee has the willingness, ability and necessary knowledge to bring itself into compliance and maintain such compliance. Accordingly, the Commission views such non-compliance as very serious.
61. Finally, participation in the NPAS ensures that radio stations across Canada notify listeners of alert messages issued by authorized officials for imminent emergencies, including events such as tornadoes, floods, forest fires, industrial disasters, tsunamis and other imminent or unfolding events posing danger to life. The full participation of the broadcasting industry is important for the NPAS to be effective in safeguarding and warning Canadians. As such, the Commission considers that compliance must be enforced. Accordingly, timely compliance by radio stations with requirements relating to participation in the NPAS will be closely monitored.
62. The Commission notes that Intercity's non-compliance with requirements relating to the filing of annual returns and annual programming reports were first identified in Broadcasting Decision 2014-574. The Commission has subsequently identified additional issues of non-compliance relating to, among other requirements, those relating to the submission of radio monitoring materials and the implementation of the NPAS. In regard to the NPAS, the Commission notes that the system has been operational on the station since 2016. Further, the Commission acknowledges the measures put in place by the licensee to avoid any future non-compliance. Nevertheless, the Commission considers the above instances of non-compliance to be serious matters. Consequently, the Commission finds that it is appropriate to grant the licensee a short-term renewal of three years for CKFG-FM. This short-term licence renewal will allow for an earlier review of the licensee's compliance with regulatory requirements.

Imposition of a condition of licence stemming from non-compliance relating to Canadian content development contributions

63. Under its approach to non-compliance, the Commission may, as a remedial measure for the harm caused to the broadcasting system, require the licensee to pay an additional CCD contribution equivalent to the amount of the shortfall, as well as repay any outstanding amount. When questioned on the possibility of having to pay a shortfall amount of up to \$139,614 (based on the documentation provided by the licensee at the time) and additional CCD contributions equal to such a shortfall within the first broadcast year of the next licence term (for a total of \$279,228), Intercity confirmed that it would seek to make the necessary restitution and comply with requirements if the Commission found a shortfall in its reported CCD contributions.

64. In light of the above, the Commission finds it appropriate to require the licensee to make a CCD contribution of \$72,060 (with at least \$1,346 to be allocated to the CRFC) by no later than 31 August 2019 (i.e., the end of the first broadcast year in the new licence term) to rectify its outstanding CCD contribution shortfalls.
65. Further, the licensee's non-compliance with its CCD contribution requirements resulted in a shortfall that represented approximately 30% of the total amount owed for the period of the licence term ending with the 2016-2017 broadcast year, and that therefore remained outstanding over five consecutive broadcast years. The Commission considers this non-compliance to be serious as it deprived the broadcasting system of a significant amount of CCD funding over a considerable period of time. Taking into account the station's financial performance, the Commission finds it appropriate to require the licensee to make an additional over-and-above CCD contribution of \$72,060 (with at least \$32,427 to be allocated to FACTOR and at least \$10,809 to be allocated to the CRFC) by no later than 31 August 2019 in order to remedy the loss to the broadcasting system as a result of the licensee's non-compliance with its current CCD contribution requirements for the 2011-2012 through 2015-2016 broadcast years. **Conditions of licence** in regard to the above are set out in the appendix to this decision.

Imposition of a condition of licence stemming from non-compliance relating to Canadian content requirements

66. Radio stations have traditionally played an important role in providing listeners with access to new music and artists. The Commission's policies and regulations relating to the broadcast of Canadian content by radio stations are intended to ensure that Canadian musical works are broadcast on Canadian radio, and that Canadian artists receive corresponding levels of exposure and royalty payments from radio station licensees.
67. It is therefore important for radio station licensees to fulfill their obligations to broadcast specific levels of Canadian content. Fulfilling these obligations benefits listeners of Canadian music and supports the objectives of the *Broadcasting Act* (the Act) according to which the broadcasting system should safeguard, enrich and strengthen the cultural fabric of Canada.
68. When a licensee is in non-compliance with its requirements relating to the broadcast of Canadian content, harm may be caused to the broadcasting system in the form of lost exposure and royalty payments.
69. In regard to non-compliance relating to music programming and the resulting harm that can be caused to the Canadian broadcasting system, in Broadcasting Regulatory Policy 2014-554, the Commission introduced a measure by which, in certain circumstances, radio station licensees in non-compliance would be required to make additional CCD contributions that are over and above those required by the Regulations and by existing conditions of licence.

70. In the present case, given the severity of the licensee's above-noted non-compliance regarding its broadcast of Canadian content during the week of 15 to 21 November 2015, and in order to remedy the harm that was caused to the broadcasting system through that non-compliance in the form of lost exposure and royalty payments for certain classes of Canadian artists, the Commission questioned Intercity on the possibility of being required to make an additional CCD contribution greater than the amount proposed by the licensee. Intercity stated that such a requirement would be burdensome for the station, but that it would accept a condition of licence requiring any additional CCD contributions to be paid by 31 August 2019.
71. Given that this is CKFG-FM's first licence term, this the first time that Intercity has been found in non-compliance with station's Canadian content requirements.
72. In light of the above, the Commission finds that it would be appropriate to require Intercity to make an additional over-and-above CCD contribution in the amount of \$39,000, to be paid to FACTOR by no later than 31 August 2019. This amount takes into account the licensee's submissions, the severity of the non-compliance, and the harm caused to the broadcasting system by the licensee's failure to respect its Canadian content obligations. A **condition of licence** to that effect is set out in the appendix to this decision.

Imposition of a condition of licence relating to the broadcast of montages

73. The Commission considers that the use of montages is improper when it serves to circumvent the requirements of the regulations for the broadcast of FVM and Canadian content. Consequently, as set out in Broadcasting Information Bulletin 2011-728, it is necessary to supervise the broadcast of montages on radio stations to ensure that licensees respect the objectives of the regulatory framework relating to such content. Should it find that a broadcaster is using montages improperly, the Commission could decide to impose specific measures or any other measures deemed necessary.
74. Although this is the first time Intercity has failed to meet the objectives and expectations relating to the broadcast of montages, the Commission is concerned with the licensee's understanding of its regulatory obligations relating to the broadcast of Canadian content and montages. In the Commission's view, limiting the broadcast of montages on CKFG-FM to no more than 10% of all programming broadcast in each week would serve as an important remedial measure that could be used to assess the licensee's compliance with respect to the broadcast of montages during the subsequent licence term. Consequently, the Commission considers it appropriate to require Intercity to devote not more than 10% of all programming broadcast during the broadcast week to montages. A **condition of licence** to that effect is set out in the appendix to this decision.

Licence amendment

75. As noted above, Intercity also filed an application to amend CKFG-FM's condition of licence relating to the broadcast of World beat and international musical selections,

set out in the appendix to Broadcasting Decision 2011-369, which currently reads as follows:

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).

76. The licensee proposed to replace that condition of licence with the following:

The licensee shall devote at least 37% of all musical selections broadcast in each broadcast week to programming drawn from content subcategory 33 (World beat and international).

77. Intercity stated that the amendment is needed to provide CKFG-FM with flexibility to adapt to the musical tastes of its audience and to allow it to better compete with other commercial radio stations in Toronto. It further stated that the amendment would allow CKFG-FM to broadcast more Rhythm and Blues, Soul and Motown music, which would attract a larger audience from the black community while maintaining the station's specialty format.

78. According to Intercity, the current requirement prevents the inclusion of charting World beat and international musical selections, which in turn affects its ability to provide listeners with continued access to the best music from international and Canadian artists. It added that approval of the amendment would not have a negative impact on incumbent radio stations in Toronto since no other stations currently broadcast World Beat, Reggae, Calypso, Gospel, Rhythm & Blues, Soul or Motown music.

79. In regard to applications for licence amendments, Broadcasting Information Bulletin 2014-608 sets out that the Commission will consider any instances of non-compliance in light of factors such as the quantity, recurrence and seriousness of the non-compliance, as well as the relationship between the proposed amendment and the instance of non-compliance. As set out in that information bulletin, in cases where a licensee is found to be in non-compliance with a regulatory requirement that it is proposing to amend, the Commission could deny the licensee's application for the amendment.

80. Under the current requirement, Intercity is able to allocate up to half of the music broadcast on CKFG-FM in each week according to its own programming choices, including charting World beat and international musical selections that would fall under content category 2 (Popular Music). The Commission's current regulations relating to the broadcast of Canadian music take into account the relatively limited availability of Canadian selections from content category 3 (Special Interest Music), including subcategory 33, by requiring licensees to meet a 10% minimum. Intercity's current condition of licence relating to the broadcast of World beat and international musical selections does not specify that they must be Canadian selections.

81. In the Commission's view, Intercity has not put forward any substantial evidence to demonstrate a lack of supply of or demand for World beat and international musical selections broadcast on CKFG-FM. Furthermore, Intercity indicated that it does not consider the amendment necessary for the financial viability of CKFG-FM, and did not provide any substantial evidence to demonstrate how continuing with the requirement would put the station at a financial disadvantage.
82. The Commission therefore finds that Intercity has not provided compelling evidence or rationale to explain why, under these circumstances, it would be appropriate for the Commission to deviate from its general practice of denying a request to amend a condition of licence when the licensee has been found in non-compliance with the regulatory requirement it is seeking to amend. Consequently, the Commission **denies** Intercity's application to amend the broadcasting licence for CKFG-FM so as to reduce from 50% to 37% the minimum portion of musical selections broadcast in each broadcast week on the station that must be drawn from content subcategory 33 (World beat and international).

Conclusion

83. In light of the above, the Commission **renews** the broadcasting licence for the English-language commercial (specialty) radio station CKFG-FM Toronto from 1 September 2018 to 31 August 2021. The terms and **conditions of licence** are set out in the appendix to this decision.
84. The Commission is gravely concerned over Intercity's unprecedented levels of non-compliance in terms of the number of instances and their severity, and over its ability to operate CKFG-FM in a compliant manner. Should the licensee continue to be in non-compliance with its regulatory requirements, the Commission may consider recourse to additional measures as part of the next licence renewal process, including the issuance of mandatory orders, or the revocation or non-renewal of the licence.

Reminders

85. Licensees are responsible for filing complete annual returns on time. As set out in Broadcasting Information Bulletin 2011-795, it is the licensee's responsibility to ensure that all appropriate forms and documentation are included with its annual returns, and to contact the Commission if further clarification is required.
86. 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 content in a variety of genres and the demand for Canadian content by listeners. The non-payment of CCD contributions therefore has the potential to cause harm to the Canadian broadcasting system.
87. Further, it is incumbent upon licensees to provide, by the required deadlines, proof of payment to CCD initiatives. Licensees must also provide sufficient documentation to support the eligibility of their contribution(s). Failure to do so may result in the

Commission finding a contribution ineligible, which in turn may affect a station's compliance with regulatory requirements.

88. The Commission is charged with the supervision and regulation of the Canadian broadcasting system. The submission of complete and accurate radio monitoring materials enables the Commission to conduct an analysis of a station's programming to verify compliance with regulatory requirements. The retention of these radio monitoring materials makes it possible for the Commission to investigate a station's programming in the case of complaints. As such, any licensee that does not file requested material in a timely manner, or does not file such material at all, affects the ability of the Commission to adequately perform its duty to independently confirm the licensee's adherence to regulatory and licence requirements. These filings also become an important indicator of whether the licensee has the willingness, ability and knowledge necessary to bring itself into compliance and maintain such compliance.
89. The full participation of the broadcasting industry is important for the NPAS to be effective in safeguarding and warning Canadians. As such, the Commission considers that compliance must be enforced, and station compliance in a timely manner will be closely monitored. The Commission could choose to apply other regulatory measures, such as those set out in Broadcasting Information Bulletin 2014-608, should the requirements with respect to the NPAS not be fulfilled.
90. Pursuant to section 22 of the Act, the broadcasting licence renewed in this decision will cease to have any force or effect should the broadcasting certificate issued by the Department of Industry lapse.

Secretary General

Related documents

- *Various radio stations – Administrative renewals*, Broadcasting Decision CRTC 2017-224, 29 June 2017
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Licensing of new radio stations to serve Scarborough and technical changes for existing radio stations serving Scarborough, Toronto and Whitchurch-Stouffville*, Broadcasting Decision CRTC 2014-574, 5 November 2014
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory

Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014

- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *Requirements for the broadcast of radio montages*, Broadcasting Information Bulletin CRTC 2011-728, 24 November 2011
- *English-language FM radio station in Toronto*, Broadcasting Decision CRTC 2011-369, 9 June 2011
- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010
- *Clarifications regarding Canadian content development contributions made by commercial radio stations*, Broadcasting Information Bulletin CRTC 2009-251, 5 May 2009
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2018-325

Terms, conditions of licence, expectation and encouragement for the English-language commercial (specialty) radio programming undertaking CKFG-FM Toronto, Ontario

Terms

The licence will take effect 1 September 2018 and expire 31 August 2021.

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 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 \$72,060 to CCD by no later than 31 August 2019 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 2019.

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 2019 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 2019.

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 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.
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 31 August 2019 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 2019.
10. 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 "montage" and "broadcast week" shall have the same meanings as those set out in the *Radio Regulations, 1986*.

Expectation

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.

Encouragement

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider

employment equity issues in its hiring practices and in all other aspects of its management of human resources.