



Broadcasting Decision CRTC 2020-252

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Reference: Part 1 application posted on 7 August 2019

Ottawa, 11 August 2020

Durham Radio Inc.

Grimsby and Beamsville, Ontario

Public record for this application: 2019-0620-8

CKLK-FM Grimsby and Beamsville – Technical changes

*The Commission **denies** an application by Durham Radio Inc. to change the authorized contours of the unlaunched English-language commercial radio station CKLK-FM Grimsby and Beamsville, Ontario.*

Background

1. In Broadcasting Notice of Consultation 2016-451, the Commission issued a call for applications for a new radio station to serve Grimsby and Beamsville, Ontario. Grimsby is located within the eastern extremity of the Hamilton Central Metropolitan Area (CMA). Beamsville, which lies on the western edge of the St-Catherine-Niagara CMA, is located approximately 10 kilometres away from Grimsby.
2. At a public hearing held on 28 November 2017 in Toronto, the Commission considered three applications for a broadcasting licence to operate a new station serving those communities. Those applications were submitted by Byrnes Communications Inc. (Byrnes); by Dufferin Communications Inc. (Dufferin), which is a wholly owned subsidiary of Evanov Communications Inc. (Evanov); and by Durham Radio Inc. (Durham).
3. In Broadcasting Decision 2018-237, after analyzing the applications based on the criteria set out in the above-mentioned notice, the Commission determined that Durham's application best met the needs of the Grimsby and Beamsville communities, approved Durham's application, and denied the applications submitted by Dufferin and Byrnes.

4. The station that Durham was approved to operate in the above-mentioned decision has not yet launched and the station must commence operations by 11 July 2021.¹

Application

5. Durham filed an application to change the authorized contours of its unlaunched English-language commercial radio station, now known as CKLK-FM Grimsby and Beamsville, by changing the class from A to B1, decreasing the average effective radiated power (ERP) from 2,000 to 1,530 watts, increasing the maximum ERP from 4,000 to 5,000 watts, increasing the effective height of the antenna above average terrain from 6 to 124.5 metres, and amending the coordinates of the transmitter site.
6. According to Durham, the approved transmitter site does not allow CKLK-FM to provide adequate coverage for the market it has been approved to serve, since approximately one-third of the residents of Grimsby will not receive the station's signal. In the applicant's view, the proposed changes are therefore necessary for CKLK-FM to offer full coverage of both Grimsby and Beamsville.

Interventions and reply

7. The Commission received numerous interventions in support of this application as well as an opposing intervention filed jointly by Bell Media Inc., Byrnes, Corus Entertainment Inc. and Evanov, to which Durham replied.

Commission's analysis and decisions

8. Section 9(1) of the *Broadcasting Act* (the Act) authorizes the Commission to issue licences subject to such conditions related to the circumstances of the licensee as the Commission deems appropriate for the implementation of the broadcasting policy set out in section 3(1) and to amend any condition on application of the licensee.
9. When a licensee of a radio station files an application for a technical amendment, the Commission generally expects the licensee to present compelling technical or economic evidence to justify the technical changes. Applications are examined on a case-by-case basis and the Commission may give consideration to the particulars of an application and any relevant issues raised in interventions.
10. Durham indicated that the purpose of its application is to correct technical deficiencies, and submitted that the requested technical changes would have no material impact on its financial projections.

¹ The Commission, in a letter decision dated 20 May 2020, approved Durham's application (2020-0229-4) to extend the deadline by which the applicant was required to commence operation of its radio station. All letters of approval issued by the Commission are available upon request for public examination at the Commission's central office.

11. After examining the public record for this proceeding, the Commission considers that the following issues must be addressed:

- whether Durham has demonstrated a compelling technical need justifying the requested technical changes;
- whether the changes are an appropriate technical solution;
- whether the requested technical changes represent an appropriate use of spectrum;
- whether approval of the requested technical changes would have an undue negative financial impact on incumbent stations; and
- whether approval of the application would undermine the integrity of the Commission's licensing process.

Demonstration of technical need

12. The Commission generally expects the licensee to demonstrate a compelling technical need, for instance, by submitting evidence that approval of the requested technical changes will solve interference or reception issues that negatively impact the community that the station is licensed to serve or other technical issues that interfere with the operation of the transmission facility.

13. Durham indicated that the requested changes were necessary for CKLK-FM to improve the reception of its signal in Grimsby by expanding its primary (3 mV/m) service contour to fully encompass this community. In support of its application, Durham provided theoretical and realistic contour maps indicating the areas of coverage it anticipates the station would provide based on the authorized and proposed operating parameters.

14. The interveners submitted that Durham's application did not take into account the station's secondary (0.5 mV/m) service contour. They added that no on-air testing has been completed, so it was unclear how Durham could now be aware of coverage deficiencies that it had not been aware of earlier, specifically, when it applied for a broadcasting licence in response to Broadcasting Notice of Consultation 2016-451. The interveners added that, in their view, a lack of due diligence in the original licensing process does not constitute grounds for approval of this application.

15. In response, Durham indicated that it was aware of the coverage limitations when it originally applied for a broadcasting licence and reiterated that its objective is to optimize coverage of Grimsby.

16. Given that Durham has neither launched its station nor completed on-air testing, the Commission considers that it is not currently possible to determine if there are signal deficiencies within CKLK-FM's authorized contours. The Commission acknowledges that the applicant's maps do indicate that CKLK-FM's primary service contour does not fully encompass Grimsby. However, these maps are similar to those that were submitted as part of the original application process. Therefore, the Commission considers that they do not show any reception issues that did not exist when Durham's application for a licence was approved. Further, given that Durham did not provide evidence of signal deficiencies within CKLK-FM's primary service contour, the Commission is of the view that the objective of this application is not to improve reception within the station's licensed service area.
17. In light of the above, the Commission finds that Durham has not demonstrated a compelling technical need for the requested technical changes.

Appropriateness of the proposed technical solution

18. The applicant indicated that the requested technical changes are necessary to provide improved service to Grimsby, which is only partially located within CKLK-FM's primary service contour. However, the interveners submitted that Durham's application does not take into account the station's secondary service contour, and they added that, in their view, moving the transmitter 10 kilometers closer to Hamilton would represent a significant change in the area served by the station.
19. The Commission notes that the applicant's proposed solution would significantly expand the area covered by CKLK-FM's primary service contour. This would not only result in a significant increase in the population served within the station's primary service contour but also in the extension of that contour deeper into the Hamilton market. The Commission further notes that Durham's application does not indicate that it considered other technical solutions that would allow it not only to improve coverage of Grimsby but also to avoid coverage of Hamilton. The Commission is of the view that other solutions may exist that would meet both of those objectives.
20. In light of the above, the Commission finds that the applicant has not demonstrated that the requested technical changes represent an appropriate technical solution.

Appropriate use of spectrum

21. Durham is not requesting the use of an alternate frequency, and the proposal would not impact the availability of frequencies in adjacent markets.
22. In light of the above, the Commission finds that the requested technical changes represent an appropriate use of spectrum.

Impact on incumbent stations

23. As mentioned above, Durham submitted that the requested technical changes are necessary for CKLK-FM to better serve its licensed market by expanding its primary service contour to fully encompass both Grimsby and Beamsville.
24. According to the interveners, Durham's application is not based on technical need and approval of these changes would result in CKLK-FM entering into the Hamilton radio market. They expressed the view that this would have an undue negative impact on incumbent stations in the Hamilton market, since that market has been stagnant for some time and cannot currently sustain a new station. Therefore, in the view of the interveners, it would be appropriate for the Commission to deny this application.
25. Durham responded that the requested technical changes provide no additional opportunities to add revenues and are consistent with its original plan to serve the Grimsby and Beamsville communities. Durham submitted that CKLK-FM's signal would not reach Hamilton, and it provided a map of interference areas to demonstrate that the station's signal would not reach any major nearby markets. However, Durham also submitted that, in its view, since Grimsby forms part of the Hamilton CMA, CKLK-FM is licensed to serve the Hamilton market.
26. An FM radio station's market is defined by the *Radio Regulations, 1986* (the Regulations) as the station's 3 mV/m contour, that is, the primary service contour, or the central area as defined by Numeris, whichever is smaller. Although Grimsby falls within the Hamilton CMA, the Commission, in accordance with Broadcasting Decision 2018-237 and taking into consideration CKLK-FM's primary service contour, considers that the applicant's licensed market is restricted to the communities of Grimsby and Beamsville. Therefore, the applicant is not licensed to serve all of the Hamilton CMA.
27. Grimsby and Beamsville currently comprise a total population of 39,159. Based on its current parameters, CKLK-FM's primary service contour encompasses a population of 37,966, which comprises all of Beamsville and approximately 65% of the population of Grimsby. The station's secondary service contour encompasses a population of 232,729.
28. If the Commission were to approve the requested technical changes, the populations within CKLK-FM's primary and secondary service contours would increase to 86,925 and 811,799, respectively. The Commission considers that this increase would likely attract more advertisers and increase the station's projected revenues. The Commission therefore considers that the applicant has understated the material impact that these changes would have on the station's financial projections.

29. Furthermore, the change in CKLK-FM's contours, if approved, would significantly increase the station's out-of-market population coverage by 39,665, 77% of which would fall within the Hamilton CMA. The Hamilton CMA is currently served by seven commercial stations,² and has exhibited an overall decline in revenues since 2015 as well as a steep decline in profit before interest and taxes since 2018. The Commission considers that CKLK-FM would likely generate revenues from this out-of-market population.
30. In light of the above, the Commission finds that approval of the requested technical changes would have an undue negative financial impact on incumbent stations serving neighbouring markets.

Integrity of the Commission's licensing process

31. As previously stated, the Commission approved Durham's application to operate CKLK-FM in Broadcasting Decision 2018-237. The publication of that decision concluded the competitive process to award a licence to operate the first local radio station dedicated to serving Grimsby and Beamsville. As part of that proceeding, after assessing the three applications under consideration, the Commission made two key determinations, that is, that Durham's application best met the needs of the Grimsby and Beamsville communities, and that, given the applicant's modest projections and limited coverage, Durham's application was least likely to have a negative impact on nearby stations.
32. The Commission expects the technical parameters submitted as part of a competitive process to accurately reflect the intended operation of the station. In the Commission's view, this is particularly relevant, since the maps provided by Durham in support of its application for a broadcasting licence clearly indicate that its station's coverage of the Grimsby region would be limited, and the fact that Durham proposed contours that would limit its impact on nearby stations was a determining factor in the original licensing decision. Given that the applicant has not submitted any evidence of other technical limitations, the Commission considers that Durham's objective is to increase CKLK-FM's coverage to include an area that the station was not originally licensed to serve.
33. The Commission acknowledges Durham's submission that it is common practice for licensees to perform a more thorough review of site availability after being awarded a licence. However, this is usually done in order to optimize coverage in a manner that does not materially change the authorized contours.

² Six of these seven stations are operated by the opposing interveners. The seventh station, CHKX-FM Hamilton is owned and operated by the applicant.

34. In addition, the Commission considers that, if it were to approve this application, CKLK-FM's new proximity to Hamilton could present an opportunity for the station to reposition its service and direct its programming and advertising activities towards Hamilton instead of its licensed market. In the Commission's view, since the purpose of the original licensing process was to provide Grimsby and Beamsville with a dedicated local service, any such reorientation of the station's activities would not be in the best interests of those communities and would compromise the original licensing process.
35. In light of the above, the Commission finds that approval of this application would undermine the integrity of the Commission's licensing process.

Conclusion

36. The Commission must consider each application on its merits, based on the circumstances specific to the application. With respect to this application, although the requested technical changes would represent an appropriate use of spectrum, Durham did not demonstrate a compelling technical need, the requested technical changes do not represent an appropriate technical solution to reception issues within CKLK-FM's primary service contour, and approval of the requested technical changes would undermine the Commission's licensing process.
37. In light of all of the above, the Commission **denies** the application by Durham Radio Inc. to change the authorized contours of the unlaunched English-language commercial radio programming undertaking currently known as CKLK-FM Grimsby and Beamsville.

Secretary General

Related documents

- *Licensing of a new radio station to serve Grimsby and Beamsville*, Broadcasting Decision CRTC 2018-237, 11 July 2018
- *Call for applications – Radio stations to serve Grimsby and Beamsville, Ontario*, Broadcasting Notice of Consultation CRTC 2016-451, 10 November 2016
- *Call for comments on market capacity and the appropriateness of issuing a call for radio applications to serve Grimsby and Beamsville, Ontario*, Broadcasting Decision CRTC 2016-26, 27 January 2016