



Broadcasting Decision CRTC 2021-276 and Broadcasting Orders CRTC 2021-277 and 2021-278

PDF version

Reference: 2021-114

Ottawa, 12 August 2021

Intercity Broadcasting Network Inc.
Toronto, Ontario

Public record for this application: 2021-0012-1
Public hearing in the National Capital Region
27 May 2021

CKFG-FM Toronto – Licence renewal, licence amendment and issuance of mandatory orders

The Commission, in Broadcasting Decision 2021-275, today approved the application by 2784486 Ontario Limited (278 Limited) for authorization to acquire the assets of the English-language commercial (specialty) radio station CKFG-FM. The licence renewal approved in this decision will allow CKFG-FM to continue its operations in the event that the close of the transaction addressed in Broadcasting Decision 2021-275 takes place after the last day of the station's current licence term, that is, 31 August 2021, or in the event that the parties fail to close that transaction. If 278 Limited becomes the licensee of this station prior to 31 August 2021, the current licensee will return its licence and a new licence will be issued to 278 Limited. In that case, this decision will not take effect.

In the current decision, the Commission **renews** the broadcasting licence for CKFG-FM from 1 September 2021 to 31 August 2024. This short-term licence renewal will allow for an earlier review of the licensee's compliance with its regulatory requirements.

The Commission finds the licensee in non-compliance with subsection 9(4) of the *Radio Regulations, 1986* (the Regulations) relating to the requirement for the licensee to respond to any inquiry regarding compliance with its regulatory obligations; subsections 15(2) and 15(5) of the Regulations relating to the requirement to make basic annual contributions to eligible Canadian content development (CCD) initiatives; its condition of licence 3 relating to the broadcast of musical selections from content subcategory 33 (World beat and international); its condition of licence 4 relating to the broadcast of spoken word programming; its condition of licence 5 relating to the broadcast of news; its condition of licence 6 relating to the contribution of CCD to cover shortfalls from the previous licence term; and its condition of licence 8 relating to the filing of an annual report by 30 November of each year setting out specific details on the manner in which the licensee has fulfilled its programming requirements in serving the

Caribbean and African communities of Toronto with its spoken word programming and musical format.

The Commission imposes a condition of licence requiring the licensee to pay its shortfalls in CCD contributions pursuant to its condition of licence 6. Further, the Commission issues mandatory orders requiring the licensee to ensure that CKFG-FM complies at all times with conditions of licence 3 and 8. Given the serious and recurrent nature of the licensee's non-compliance with its regulatory requirements and conditions of licence, the Commission imposes a condition of licence requiring the licensee to broadcast an on-air announcement regarding its non-compliance.

Finally, the Commission **approves** the licensee's request to extend the deadline set out in its condition of licence relating to the \$72,060 CCD contribution that it was required to make to remedy the harm caused to the Canadian broadcasting system by its non-compliance with its regulatory requirements during CKFG-FM's first licence term.

Application

1. The Commission has the authority, pursuant to subsection 9(1) of the *Broadcasting Act* (the Act), to issue and renew licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the Act.
2. On 27 November 2020, the Commission issued Broadcasting Notice of Consultation 2020-382, which listed the radio stations for which the broadcasting licences would expire on 31 August 2021 and therefore needed to be renewed to continue their operations. In that notice of consultation, the Commission requested that the licensees of those stations submit renewal applications for their broadcasting licences.
3. Intercity Broadcasting Network Inc. (Intercity) subsequently filed an application (2021-0012-1) to renew the broadcasting licence for the English-language commercial (specialty) radio station CKFG-FM Toronto, Ontario. Intercity also requested an amendment to condition of licence 7 set out in paragraph 14 of Broadcasting Decision 2020-79 in order to extend, from 31 August 2021 to 31 August 2022,¹ the deadline for a contribution of \$72,060 that it was required to make to Canadian content development (CCD) in order to remedy the harm caused to the Canadian broadcasting system that resulted from its non-compliance with its regulatory obligations during CKFG-FM's first licence term.

¹ As mentioned in the background section of this decision, the Commission extended the deadline specified in this condition of licence on two prior occasions. That is, the deadline was amended from 31 August 2019 to 29 February 2020 in Broadcasting Decision 2019-305 and from 29 February 2020 to 31 August 2021 in Broadcasting Decision 2020-79.

4. The Commission published the above-mentioned application in Broadcasting Notice of Consultation 2021-114 along with application 2020-0800-5, in which 2784486 Ontario Limited (278 Limited) requested authorization to acquire the assets of CKFG-FM.

Interventions and Reply

5. The Commission received interventions in comment that were filed for both this application and 278 Limited's application. These interventions were submitted by individuals and addressed the proposed change in ownership of the station, which relates to 278 Limited's application and not this application. Intercity, which is the current owner of the station, did not reply to the interventions. A reply was filed by 278 Limited only.
6. After considering the particulars of the applications submitted by Intercity and 278 Limited, and reviewing the above-mentioned interventions and reply, the Commission elected to address 278 Limited's application (i.e., 2020-0800-5) in a separate decision, specifically, Broadcasting Decision 2021-275, and to address the matters raised in the interventions and reply only in that decision.

Background

7. The Commission originally granted approval for the operation of this station in Broadcasting Decision 2011-369. In that decision, the Commission expressed the view 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 musical format. Further, the Commission imposed conditions of licence requiring that Intercity's proposed programming orientation be maintained through the course of the licence term approved in that decision.
8. In Broadcasting Decision 2014-574, Commission informed the licensee that a review of its performance had revealed serious instances of non-compliance relating to CCD contributions as well as the filing of annual returns and programming reports, and that the licensee's performance and manner of remedying these instances of non-compliance would be reviewed as part of its next licence renewal.
9. In Broadcasting Decision 2018-325, the Commission renewed the station's broadcasting licence on a short-term basis from 1 September 2018 to 31 August 2021 in light of the licensee's non-compliance with its requirements relating to the following:
 - the broadcast of Canadian musical selections drawn from content categories 2 (Popular Music) and 3 (Special Interest Music) as well as musical selections drawn from content subcategory 33 (World beat and international);
 - the broadcast of montages, for which objectives and expectations were set out in Broadcasting Information Bulletin 2011-728;

- the filing of a complete and accurate program log and music list, annual returns, and annual reports in which Intercity was required to outline the manner in which it had fulfilled its programming requirements in serving the Caribbean and African communities of Toronto with its spoken word programming and musical format;
- basic contributions to CCD as well as over-and-above CCD contributions in several broadcast years; and
- implementation of the National Public Alerting System.

10. In the above-mentioned decision, the Commission indicated that it was gravely concerned about Intercity's unprecedented levels of non-compliance as well as its ability to operate the station in a compliant manner, and added that it may, if the licensee continued to be in non-compliance with its regulatory requirements during the station's second licence term, consider recourse to additional measures, such as the issuance of mandatory orders or the revocation or non-renewal of the licence. The Commission also imposed additional conditions of licence. These were set out in the appendix to that decision and related to additional CCD requirements (conditions of licence 6, 7 and 9) and the broadcast of montages (condition of licence 10).

11. CKFG-FM was originally owned and controlled by Fitzroy Gordon through his ownership of Maja Media Group Inc., which owns 81% of the voting shares of Intercity. After the passing of Fitzroy Gordon in April 2019, effective control of CKFG-FM passed to his estate. Jamrock Broadcasting Corporation (Jamrock), which is owned by Delford Blythe, owns the remaining 19% of the voting shares of Intercity.

12. 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. An interim governance and management structure was subsequently established, in accordance with an Order dated 2 December 2019, to ensure the continuance of the station's operations.

13. In Broadcasting Decision 2019-305, the Commission approved in part an application by Intercity to amend conditions of licence 6, 7 and 9 set out in the appendix to Broadcasting Decision 2018-325 by extending the deadlines specified in those conditions of licence. The licensee indicated that these extensions were necessary due to issues resulting from the above-mentioned death of Fitzroy Gordon and the settlement of his estate. In that decision, the Commission extended, from 31 August 2019 to 29 February 2020, the deadlines by which the licensee needed to fulfil its requirements relating to additional CCD contributions. The Commission also extended, from 30 November 2019 to 30 November 2020, the deadline by which

Intercity was required to supply supporting documentation (including proof of payment and eligibility) for those contributions.

14. Subsequently, the Commission approved in part another extension to the deadlines amended in the above-mentioned decision. As set out in Broadcasting Decision 2020-79, the Commission imposed deadlines requiring that Intercity's additional CCD contributions be made in successive six-month intervals, as outlined below:

- the CCD contribution specified in condition of licence 6 was to be fulfilled by 31 August 2020 and supporting documentation was to be supplied by 30 November 2020;
- the CCD contribution specified in condition of licence 9 was to be fulfilled by 28 February 2021 and supporting documentation was to be supplied by 30 November 2021; and
- the CCD contribution specified in condition of licence 7 was to be fulfilled by 31 August 2021 and supporting documentation was to be supplied by 30 November 2021.

Non-compliance

15. In Broadcasting Notice of Consultation 2021-114, the Commission stated that the licensee was in apparent non-compliance with the following:

- subsection 9(4) of the *Radio Regulations, 1986* (the Regulations) relating to the requirement for the licensee to respond to any inquiry regarding compliance with its regulatory obligations;
- subsections 15(2) and 15(5) of the Regulations relating to the requirement to make basic annual contributions to eligible CCD initiatives;
- condition of licence 3 set out in the appendix to Broadcasting Decision 2018-325 relating to the broadcast of musical selections from content subcategory 33 (World beat and international) for the broadcast week of 4 to 10 October 2020;
- condition of licence 4 set out in the appendix to Broadcasting Decision 2018-325 relating to the broadcast of spoken word programming for the broadcast week of 4 to 10 October 2020;
- condition of licence 5 set out in the appendix to Broadcasting Decision 2018-325 relating to the broadcast of news for the broadcast week of 4 to 10 October 2020;
- condition of licence 6 set out in Broadcasting Decision 2020-79 relating to the contribution of CCD to cover shortfalls from the previous licence term; and

- condition of licence 8 set out in the appendix to Broadcasting Decision 2018-325 relating to the filing of an annual report by 30 November of each year setting out specific details on the manner in which the licensee has fulfilled its programming requirements to serve the Caribbean and African communities of Toronto with its spoken word programming and musical format.

16. In addition to the above-mentioned instances of apparent non-compliance, the licensee is in apparent 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.

Reporting requirements

Filing of annual programming reports

17. Condition of licence 8, as set out in the appendix to Broadcasting Decision 2018-325, requires the licensee 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.
18. The report for the 2018-2019 broadcasting year was due by 30 November 2019 but was not filed until 11 January 2021, more than a year later.
19. Intercity, in a letter dated 1 February 2021, stated that the station had transitioned to new management in January 2020 and that the station's new management had been erroneously informed by the station's previous management that this report had already been filed. The licensee added that it had instituted a practice requiring continuous oversight and weekly confirmation of compliance monitoring by management alongside a change in corporate culture that emphasized appreciation and accountability for the responsibility of operating a commercial radio station in compliance with its requirements.
20. 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 2018-2019 broadcast year. The Commission considers this to be a very serious matter and notes that the licensee, in Broadcasting Decision 2018-325, was previously found in non-compliance with this requirement. The Commission acknowledges that the station has since undergone a change in management and that the report has since been filed. In the Commission's view, the station's new management understands this requirement and has implemented appropriate measures to ensure future compliance.

Commission requests for information

21. Paragraph 10(1)(i) of the Act authorizes the Commission, in furtherance of its objects, to make regulations requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify.

22. Pursuant to this authority, the Commission made subsection 9(4) of the Regulations, which requires licensees to respond to any Commission request for information regarding the licensee's adherence to the conditions of its licence, the Act, the Regulations, industry standards, practices or codes or any other self-regulatory mechanism of the industry.
23. As noted above, pursuant to condition of licence 8, as set out in the appendix to Broadcasting Decision 2018-325, Intercity was required to file a programming report for the 2018-2019 broadcasting year by 30 November 2019 but did not do so until 11 January 2021. In addition, the licensee failed to respond to an inquiry from the Commission regarding the late filing of the report.
24. Intercity, in a letter dated 1 February 2021, stated that the station had been operated by other management until January 2020. In the licensee's view, this transition facilitated changes in the operation of the station, such as the implementation of continuous oversight and weekly confirmation of compliance monitoring, which will ensure that the station remains in compliance moving forward.
25. In light of the above, the Commission finds the licensee in non-compliance with subsection 9(4) of the Regulations. The Commission considers this non-compliance to be very serious in nature. Despite this non-compliance, the Commission notes that the station has transitioned to new management and is of the view that appropriate measures have been implemented to ensure future compliance.

Canadian content development contributions

26. Paragraph 10(1)(k) of the Act authorizes the Commission to make regulations respecting such other matters as it deems necessary for the furtherance of its objects, which includes the implementation of the broadcasting policy set out in subsection 3(1). Paragraphs 3(1)(e) and (s) declare that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming and that private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them, contribute significantly to the creation and presentation of Canadian programming.

Basic annual contributions to eligible initiatives

27. Pursuant to the authority granted by paragraph 10(1)(k) of the Act, and consistent with paragraphs 3(1)(e) and 3(1)(s)(i), the Commission made section 15 of the Regulations, which sets out the basic CCD requirements for radio stations. More specifically, subsection 15(2) requires all commercial radio licensees with revenues exceeding \$1.25 million to make a basic annual contribution to CCD. Further, in regard to this contribution, subsection 15(5) requires that at least 15% of it be made to the Community Radio Fund of Canada and at least 45% of it be made to FACTOR or MUSICACTION.

28. In regard to CKFG-FM, the Commission's records show that the licensee's annual basic CCD contributions for the 2019-2020 broadcast year (which ended on 31 August 2020) were paid late.
29. In a letter dated 1 February 2021, the licensee indicated that the ongoing COVID-19 pandemic significantly impacted its already failing business. For example, it laid off its entire staff in April 2020 due to a decline in revenue. The licensee added that the station had few options to avoid going off the air and that it is currently operating under court protection.
30. As mentioned previously, in the licensee's view, the transition to new management facilitated changes in the manner in which the station is operated and in its corporate culture that will ensure its future compliance.
31. The Commission acknowledges that the ongoing pandemic has presented financial challenges for all radio station licensees, and that Intercity did eventually make the required contribution. It is of the view that Intercity has demonstrated an understanding of its basic CCD requirements.
32. In light of the above, the Commission finds the licensee in non-compliance with subsections 15(2) and 15(5) of the Regulations for the 2019-2020 broadcast year. The Commission notes the recurrent nature of this non-compliance, since Intercity was previously found to be in non-compliance with its basic CCD requirements in Broadcasting Decision 2018-325.

Contributions to cover shortfalls from the previous licence term

33. Pursuant to the authority granted by subsection 9(1) of the Act, and consistent with paragraph 3(1)(e) and subparagraph 3(1)(s)(i), the Commission has imposed conditions of licence requiring programming undertakings to contribute in various ways to the creation of Canadian programming, including imposing CCD contribution requirements. Further, consistent with the above policy objectives and pursuant to the authority granted by subsection 9(1) of the Act, where licensees have experienced a shortfall in CCD contributions, the Commission has sought to remedy the harm caused to the broadcasting system by imposing conditions of licence requiring licensees to make additional CCD contributions.
34. After being found in non-compliance with its CCD contribution requirements during its first licence term, Intercity was required by condition of licence to make up the resulting shortfall in contributions. Specifically, the Commission imposed condition of licence 6, as originally set out in the appendix to Broadcasting Decision 2018-325 and subsequently amended in Broadcasting Decisions 2019-305 and 2020-79. As set out in paragraph 14 of Broadcasting Decision 2020-79, the condition of licence reads as follows:
 - 6. In addition to the required basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time, the licensee shall make a contribution of \$72,060

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

Of this amount, the licensee shall allocate no less than \$1,346 to the Community Radio Fund of Canada. The remaining amounts of this additional CCD contribution shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

35. In a letter dated 1 February 2021, Intercity confirmed that it had made a payment of \$12,155 to the Community Radio Fund of Canada on 18 February 2020, and submitted that the contribution deadline specified in the above condition of licence had, at its request, been extended to 31 August 2021. The licensee was of the opinion that it has maintained its compliance with this requirement and, accordingly, has not implemented additional measures to ensure future compliance.
36. Intercity also noted that it had put together a plan in January 2020 to fulfil its CCD contribution requirements by promoting and hosting multiple outdoor events that would highlight Canadian artists. However, the onset of the ongoing COVID-19 pandemic in Canada precluded implementation of this plan.
37. The Commission is of the view that there was a misunderstanding regarding the deadline for this contribution. Although there was some correspondence between Intercity and Commission staff in 2020, Intercity's application for an amendment to its condition of licence with regard to the deferral of its requirement was ultimately withdrawn (i.e., application 2020-0536-3). Intercity did make an informal request to Commission staff to extend this deadline in a letter dated 18 August 2020. However, a requirement imposed by condition of licence can be amended only by the Commission. Since no Commission decision was ever rendered, this deadline was never extended.
38. The Commission notes that the letter dated 18 August 2020 was written days prior to the 31 August 2020 deadline by which the licensee was required to fulfil its \$72,060 contribution requirement, and that a balance of \$59,903,² which currently remains outstanding, was due at the end of August 2020. Additionally, Intercity's proof of payment for the contribution of \$12,155 that it made to the Community Radio Fund of Canada was submitted on 5 February 2021, that is, nearly a year after the payment was made and approximately two months after the 30 November 2020 deadline specified in the condition of licence set out above. The Commission considers,

² The licensee contributed an amount slightly greater than what was required to fulfil its basic CCD contribution, and the resulting surplus was allocated to fulfillment of this CCD requirement instead.

however, that Intercity demonstrated good faith and a proactive approach by seeking approval for a one-year extension to its contribution deadline.

39. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to its requirement to make CCD contributions to cover shortfalls from the previous licence term. The Commission considers this non-compliance to be very serious in nature. Moreover, since this condition of licence was imposed as a result of a shortfall in the licensee's CCD contributions during its first licence term, Intercity has now been found in non-compliance with this requirement in both of its two licence terms.

Programming requirements

Broadcast of World beat and international music

40. 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 different kinds of special programming. As such, they differ from stations that operate under the Group I Pop, rock and dance format or the Group II Country format. As stated in that public notice, the Commission considers that, among other things, a separate format for specialty stations is a useful tool for increasing the diversity of programming available to listeners.
41. In regard to CKFG-FM's specialty format, Intercity, following on its own commitment, is required by condition of licence to devote at least 50% of the musical selections broadcast on the station during each broadcast week to musical selections drawn from content subcategory 33 (World beat and international).
42. Based on its examination of the programming broadcast on CKFG-FM during the broadcast week of 4 to 10 October 2020, the Commission determined that the licensee identified only 44.47% of the selections that were broadcast as belonging to subcategory 33 (World beat and international). Moreover, a number of these selections were miscategorised and should have been identified as belonging to content subcategory 21 (Pop, rock and dance). In fact, excluding the miscategorised selections, the actual percentage of musical selections drawn from subcategory 33 (World beat and international) and broadcast on CKFG-FM during that broadcast week was only 43.52%.
43. When asked to comment on this apparent non-compliance, the licensee indicated that, due to a decline in revenue resulting from the ongoing COVID-19 pandemic, it reduced the station's staffing levels, which resulted in CKFG-FM broadcasting more music programming during the monitored week. This increased the total number of tracks that were broadcast and decreased the ratio of programming devoted to content subcategory 33 (World beat and international).
44. According to Intercity, the success of certain Caribbean and African traditional gospel music selections, which were classified as belonging to content subcategory 21 (Pop,

rock and dance) rather than subcategory 33 (World beats and international) after charting, reduced its ability to broadcast qualifying music selections. Additionally, according to the licensee, the Commission deemed some traditional Soca music styles to be part of a montage.

45. The licensee added that it had implemented measures to ensure future compliance, including changes in its key personnel, management culture and protocols regarding music selection (including restriction of programming changes), as well as the implementation of continuous oversight and weekly confirmation of compliance monitoring by management. Moreover, the licensee submitted that it had impressed on its personnel the importance of appreciating and taking accountability for the responsibility of operating a commercial radio station in compliance (for example, by linking compliance with these requirements to staff performance evaluations).
46. Given that the licensee was previously found in non-compliance with this condition of licence, and despite the fact that this condition of licence follows on from its own commitment to serve the Caribbean and African communities of Toronto, the Commission is not satisfied that the licensee has an accurate understanding of which musical selections belong to content subcategory 33 (World beat and international).
47. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to the broadcast of musical selections from content subcategory 33 (World beat and international). The Commission considers this non-compliance to be very serious in nature and notes that the licensee has failed to comply with this requirement in both of its two licence terms.

Broadcast of spoken word programming

48. Based on its examination of the monitoring material for the week of 4 to 10 October 2020, the Commission determined that the licensee devoted only 9% of its programming to spoken word programming (including news, surveillance and discussion on issues relating to and affecting local communities), which is 1% less than the 10% required pursuant to condition of licence 4 in the appendix to Broadcasting Decision 2018-325.
49. When asked to comment on this apparent non-compliance, the licensee indicated that, due to a decline in revenue resulting from the ongoing COVID-19 pandemic, it reduced staffing levels and postponed the broadcast of World Beat Sports, its weekly two-hour spoken word program. As such, CKFG-FM devoted less than 10% of its programming to spoken word programming during the monitored week.
50. Intercity added that it has since, despite serious financial losses due to the pandemic, reinstated its World Beat Sports program, restored staffing levels, and instituted continuous oversight and weekly confirmation of compliance monitoring by management.

51. The Commission is satisfied that the licensee understands its obligations and has, despite the challenges imposed by the pandemic, implemented appropriate measures to ensure that it maintains its compliance with this condition of licence in future.
52. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to the broadcast of spoken word programming.

Broadcast of news

53. Based on its examination of the monitoring materials for the week of 4 to 10 October 2020, the Commission determined that the licensee broadcast only 3 hours and 27 minutes of news, which is 2 hours and 13 minutes less than the 5 hours and 40 minutes of news that it was required to broadcast pursuant to condition of licence 5 in the appendix to Broadcasting Decision 2018-325.
54. The licensee, when asked to comment on this apparent non-compliance, indicated that, due to a decline in revenue resulting from the ongoing COVID-19 pandemic, it reduced staffing levels and postponed its nightly one-hour news roundup, which resulted in the broadcast of more music programming. As such, CKFG-FM did not fulfil its news programming requirement during the monitored week.
55. Intercity added that it has since, despite serious financial losses due to the pandemic, reinstated its nightly news roundup, and restored and extended its daily newscast with the return to work of full-time staff. Additionally, the licensee indicated that it has instituted continuous oversight and weekly confirmation of compliance monitoring by management.
56. The Commission is satisfied that the licensee understands its obligations and has, despite the challenges imposed by the pandemic, implemented appropriate measures to ensure that it maintains its compliance with this condition of licence in future.
57. In light of the above, the Commission finds the licensee in non-compliance with its condition of licence relating to the broadcast of news. The Commission considers this non-compliance to be very serious in nature.

Payment of Part I and Part II licence fees

58. In accordance with section 3 of the *Broadcasting Licence Fee Regulations, 1997*, every licensee is required to pay Part I and Part II licence fees to the Commission on an annual basis. Part I licence fees represent a licensee's proportional share of the total regulatory costs incurred by the Commission with respect to broadcasting in a given year, while Part II licence fees are regulatory fees designed to recover part of the Government of Canada's annual investment in the Canadian broadcasting system. As these fees are imposed by regulation made pursuant to section 11 of the Act, they represent a regulatory obligation under Part II of the Act.

59. As of 1 February 2021, Intercity owes a total of \$27,454.36 in unpaid licence fees for three broadcast years (i.e., 2018-2019 through 2020-2021) and interest charged on this unpaid balance.³
60. The licensee, in a letter dated 3 March 2021, indicated that the ongoing COVID-19 pandemic had significantly negatively impacted its already failing business and left it with few options to avoid going off the air. Intercity added that it laid off all staff in April 2020 due to a decline in revenue and that the station remains in operation because it is under court protection.
61. According to Intercity, the advertisement revenues have not recovered and are projected to remain below pre-pandemic levels for the foreseeable future, which renders it difficult to make a firm commitment to pay these fees. The licensee indicated that it is cautiously optimistic that such payment could be made by 31 August 2022 if advertising revenues improve or the station receives a new injection of capital.
62. In light of the above, the Commission finds the licensee in non-compliance with section 3 of the *Broadcasting Licence Fee Regulations, 1997* for three broadcast years, specifically, 2018-2019 through 2020-2021. The Commission considers this non-compliance to be very serious in nature.

Regulatory measures

63. 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 instances of 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.
64. As set out in Broadcasting Regulatory Policy 2014-554, for stations that are in non-compliance, and depending on the nature of the non-compliance, the Commission may apply, on a case-by case basis, measures such as renewing the licence for a short term; imposing additional conditions of licence; calling the licensee to a public hearing to respond to and discuss apparent non-compliance; issuing a mandatory order requiring the licensee to comply with regulatory requirements; or suspending, not renewing, or revoking the licence.
65. The Commission acknowledges the licensee's willingness to bring the station into compliance with its regulatory requirements. However, given the seriousness of the various instances of non-compliance along with the recurrence of the licensee's non-

³ After the required date of payment, any unpaid balance continues to bear interest until the Commission receives full payment. Interest charges are calculated at the average bank rate plus three percent and compounded on a monthly basis.

compliance with subsections 15(2) and 15(5) of the Regulations as well as with its conditions of licence relating to the broadcast of musical sections drawn from content subcategory 33 (World beat and international), the payment of CCD contributions, and the provision of annual programming reports, the Commission asked Intercity to comment on the possible imposition of regulatory measures such as a short-term licence renewal, the imposition of additional CCD contributions or mandatory orders, or the non-renewal or suspension of the broadcasting licence for CKFG-FM.

66. As mentioned above, the licensee indicated, in a letter dated 1 February 2021, that it does not agree that it was in non-compliance with the CCD contribution requirements imposed under condition of licence 6. Rather, the licensee submitted that the contribution deadline set out in paragraph 14 of Broadcasting Decision 2020-79 had been extended such that payment of the outstanding balance was not required until 31 August 2021. Intercity acknowledged, however, that it was in non-compliance with a number of its other requirements.
67. Given this, the licensee stated that it would accept a short-term licence renewal, which would allow the station's new management to demonstrate its willingness and ability to operate the station in compliance with its requirements. Intercity also expressed the view that revocation or non-renewal of the station's licence would penalize the station's current management for errors made by the station's previous management.
68. The Commission is of the view that a short-term licence renewal would provide Intercity with an incentive and an earlier opportunity to demonstrate its compliance. Further, despite the serious and recurrent nature of some of the licensee's instances of non-compliance, the Commission is of the view that the revocation or non-renewal of the broadcasting licence for CKFG-FM is neither warranted nor in the best interest of the public, in particular, the Caribbean and African communities that the station is licensed to serve. As such, the Commission considers that it would be appropriate to renew the station's broadcasting licence for a three-year period, which will allow for an earlier review of the licensee's compliance with its regulatory requirements.
69. The licensee was also asked to comment on the possible imposition of mandatory orders or of other regulatory measures, such as additional conditions of licence, which could, for instance, require it to make additional CCD contributions or broadcast an on-air announcement.
70. Intercity acknowledged that the basic CCD contributions required under subsections 15(2) and 15(5) of the Regulations were made late. In the licensee's view, given that the station faces ongoing financial challenges, did make its basic CCD contributions (albeit late), and intends to pay its shortfall in the additional CCD contributions imposed by condition of licence 6 by 31 August 2021 (which Intercity submitted was the deadline by which these contributions were due), the imposition of additional CCD contributions or mandatory orders related to its CCD requirements would not be appropriate.

71. As for the possible imposition of an on-air announcement, Intercity, in a letter dated 1 February 2021, indicated that it was not in favour of such a requirement. In its view, the broadcast of such an announcement would create uncertainty about the future of the station, which continues to struggle, for both listeners and advertisers. Further, in its opinion, broadcasting this message would run counter to the efforts that the station's new management has made to bring the station into compliance.
72. As for the possible imposition of mandatory orders, Intercity indicated that it would agree to orders pertaining to its conditions of licence relating to the broadcast of musical selections drawn from content subcategory 33 (World beat and international) and the provision of annual programming reports. It would not agree to the imposition of mandatory orders relating to its CCD requirements. As mentioned above, Intercity was of the view that it had brought the station into compliance with regard to its basic CCD contribution requirements and that there was no non-compliance in regard to the requirement to make up the shortfall from its first licence term.
73. Given the station's current financial situation, the Commission does not consider it appropriate to impose additional CCD contributions. The Commission does, however, consider it appropriate to impose a requirement that the licensee pay its shortfall in contributions, specifically, those required pursuant to condition of licence 6 set out in paragraph 14 of Broadcasting Decision 2020-79, by contributing a total of \$59,903 to CCD by **31 March 2022**. Supporting documentation (including sufficient proof of payment and eligibility) must be provided to the Commission by **30 November 2022**. A **condition of licence** to that effect is set out in Appendix 1 to this decision.
74. In addition, in light of the serious and repeated nature of CKFG-FM's non-compliance, the Commission also finds that it would be appropriate to require Intercity to broadcast on CKFG-FM an on-air announcement regarding its non-compliance three times a day, distributed in a reasonable manner between 6 a.m. and 10 a.m. or between 4 p.m. and 6 p.m., for five consecutive days within the 14-day period following the beginning of the new licence term (i.e., 1 through 14 September 2021). To confirm compliance with this requirement, the licensee must file with the Commission the audio recordings for the broadcast days during which the announcement was broadcast and a completed and signed Attestation as to the broadcast of the non-compliance announcement on CKFG-FM Toronto, which can be found in Appendix 2 to this decision. A **condition of licence** to that effect is set out in Appendix 1 to this decision.
75. Further, despite the licensee's awareness and its desire to operate CKFG-FM in accordance with its regulatory obligations, in order to stress the importance with which the Commission takes compliance with regulatory obligations, the Commission considers the imposition of mandatory orders to be appropriate.
76. Subsection 12(2) of the Act allows the Commission to make an order requiring a person to do any act or things that it is required to do under, or forbidding a person from doing anything contrary to, Part II of the Act, or any regulation, licence, decision or order made or issued by the Commission under Part II. Further, section 13 of the Act allows a mandatory order to be made an order of the Federal Court and makes such orders enforceable by the Federal Court.

77. Accordingly, given the serious and recurrent nature of the licensee's non-compliance with its conditions of licence relating to the broadcast of musical selections drawn from content subcategory 33 (World beat and international) and the provision of annual programming reports, the Commission imposes mandatory orders requiring the licensee to comply with these conditions of licence.
78. As for the licensee's unpaid Part I and Part II licence fees, the Commission considers it appropriate to impose a requirement that the licensee make up this shortfall within the **90-day period** immediately following the publication of this decision.

Licence amendment

79. The licensee, in a letter dated 3 March 2021, confirmed that it was seeking to amend condition of licence 7 set out in paragraph 14 of Broadcasting Decision 2020-79 by extending the deadline of 31 August 2021 to 31 August 2022 and by extending the deadline by which it must provide supporting documentation from 30 November 2021 to 30 November 2022.
80. To ensure the integrity of its licensing process, the Commission expects licensees of radio stations that file applications to amend conditions of licence to present evidence supporting the need for any proposed amendments. The Commission examines such applications on a case-by-case basis, and may also give consideration to the particulars of an application and any relevant issues raised in interventions. In addition, the Commission typically expects a licensee to demonstrate compliance with existing conditions of licence when it seeks a licence amendment, and has generally been inclined to deny such requests when the non-compliance is directly related to the requirement that the licensee wishes to amend.
81. According to Intercity, the amendment is necessary to ensure the financial viability of the station. Intercity added that the additional CCD payments imposed at the time of its last licence renewal were a significant drain on its limited financial resources and that its financial challenges had affected the operation of the station (for example, staffing levels were significantly decreased between 2019 and 2020). Moreover, the onset in Canada of the ongoing COVID-19 pandemic precluded the implementation of the licensee's plan to fulfil this requirement by promoting and hosting events highlighting Canadian artists. Instead, due to the pandemic, the station was forced to lay off all of its staff in April 2020 and experienced a sudden and significant decrease in its advertising revenues, which are projected to remain below pre-pandemic levels for the foreseeable future.
82. The Commission acknowledges that the licensee attempted to develop and implement a plan that would allow it to fulfil its obligations, and that the pandemic resulted in significant challenges for the radio industry as a whole. In the Commission's view, the licensee has demonstrated that CKFG-FM's financial viability is threatened and, therefore, that it has an economic need for the requested licence amendment. Moreover, the Commission considers that the 2021-2022 broadcast year is likely to be challenging for the radio industry as a whole, and that approval of this request would

provide the licensee more flexibility not just in managing its expenditures but also in managing its human resources.

83. Although the licensee has been found in non-compliance with its conditions of licence relating to CCD contributions, and although it would be contrary to the Commission's general approach, the Commission, given the particular circumstances of the present case, finds it appropriate to make an exception to its general approach and grant a one-year extension to the deadlines specified in condition of licence 7 as set out in paragraph 14 of Broadcasting Decision 2020-79. A **condition of licence** to that effect is set out in Appendix 1 to this decision.

Conclusion

84. In light of all of the above, the Commission **renews** the broadcasting licence for the English-language commercial (specialty) radio programming undertaking CKFG-FM Toronto from 1 September 2021 to 31 August 2024. Further, the Commission **approves** the request by Intercity Broadcasting Network Inc. to amend condition of licence 7 as set out in paragraph 14 of Broadcasting Decision 2020-79 in order to extend the deadlines by which the licensee must fulfil its CCD contributions and supply supporting documentation. The **conditions of licence** for the station are set out in Appendix 1 to this decision.

Reminders

85. In the event that the transaction approved in Broadcasting Decision CRTC 2021-275 is completed prior to 31 August 2021, Intercity will return its current licence and a new licence will be issued to 278 Limited. Accordingly, this decision will not take effect.
86. Pursuant to section 22 of the Act, the broadcasting licence renewed in this decision will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry lapses.
87. 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 its regulatory obligations. Moreover, licensees must ensure that expenditures are not self-serving – that is, beneficiaries must be independent of licensees.

88. 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.
89. 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 additional mandatory orders, or the revocation or non-renewal of the licence.

Secretary General

Related documents

- *CKFG-FM Toronto – Acquisition of assets*, Broadcasting Decision CRTC 2021-275, 12 August 2021
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2021-114, 22 March 2021
- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2020-382, 27 November 2020
- *CKFG-FM Toronto – Licence amendments*, Broadcasting Decision CRTC 2020-79, 28 February 2020
- *CKFG-FM Toronto – Licence amendments*, Broadcasting Decision CRTC 2019-305, 29 August 2019
- *CKFG-FM Toronto – Licence renewal and amendment*, Broadcasting Decision CRTC 2018-325, 28 August 2018
- *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
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *English-language FM radio station in Toronto*, Broadcasting Decision CRTC 2011-369, 9 June 2011

- *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 1 to Broadcasting Decision CRTC 2021-276

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 2021 and expire 31 August 2024.

Conditions of licence

1. The licensee shall adhere to the conditions 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 **31 March 2022** 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 2022**.

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 **31 August 2022** 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 2022**.

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. 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*.

10. a) The licensee shall broadcast the following announcement three times a day, distributed in a reasonable manner, between 6:00 a.m. and 10:00 a.m. or between 4:00 p.m. and 6:00 p.m., for five consecutive business days, within the 14-day period immediately following the beginning of the new licence term (1 through 14 September 2021):

Radio frequencies are a limited public resource. Broadcasters are required to abide by a number of regulations and conditions of licence in order to operate a radio station. In Broadcasting Decision 2021-276, the CRTC determined that this station is in non-compliance with the *Radio Regulations, 1986* and its conditions of licence. The instances of non-compliance are a recurring issue. CKFG-FM has put measures in place to ensure that the instances of non-compliance in question do not reoccur.

- b) The licensee shall provide to the Commission the audio recordings for the broadcast days during which the announcement was broadcast, and file a completed and signed Attestation as to the broadcast of the non-compliance announcement on CKFG-FM Toronto, set out in Appendix 2 to this decision, within the 14-day period following the final broadcast of the announcement.

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.

Appendix 2 to Broadcasting Decision CRTC 2021-276

Attestation as to the broadcast of the non-compliance announcement on CKFG-FM Toronto

In regard to the requirements set out in condition of licence 10 in Appendix 1 to *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, I _____ (NAME) on behalf of _____ (LICENSEE), certify that the announcement regarding CKFG-FM Toronto's non-compliance with the *Radio Regulations, 1986* and its conditions of licence, was duly broadcast three times a day, distributed in a reasonable manner between 6:00 a.m. and 10:00 a.m. or between 4:00 p.m. and 6:00 p.m., for five consecutive days within the 14-day period immediately following the beginning of the new licence term (i.e., 1 through 14 September 2021), as follows:

First date of broadcast	-	Time	1:	2:	3:
Second date of broadcast	-	Time	1:	2:	3:
Third date of broadcast	-	Time	1:	2:	3:
Fourth date of broadcast	-	Time	1:	2:	3:
Fifth date of broadcast	-	Time	1:	2:	3:

Signature

Date

Appendix 3 to Broadcasting Decision CRTC 2021-276

Broadcasting Mandatory Order CRTC 2021-277

Pursuant to subsection 12(2) of the *Broadcasting Act*, the Commission hereby orders Intercity Broadcasting Network Inc., licensee of CKFG-FM Toronto, to comply at all times during the term of the licence granted in *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, with the requirement set out in condition of licence 3 in Appendix 1 to that decision, which 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).

Appendix 4 to Broadcasting Decision CRTC 2021-276

Broadcasting Mandatory Order CRTC 2021-278

Pursuant to subsection 12(2) of the *Broadcasting Act*, the Commission hereby orders Intercity Broadcasting Network Inc., licensee of CKFG-FM Toronto, to comply at all times during the term of the licence granted in *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, with the requirement set out in condition of licence 8 in Appendix 1 to that decision, which reads as follows:

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.