



Broadcasting Decision CRTC 2021-380

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Reference: Part 1 application posted on 9 April 2021

Ottawa, 12 November 2021

Durham Radio Inc.
Grimsby and Beamsville, Ontario

Public record for this application: 2021-0205-2

CKLK-FM Grimsby and Beamsville – Technical changes

The Commission **denies** an application to change the authorized contours of the unlaunched English-language commercial radio programming undertaking 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.¹ Grimsby is located within the eastern extremity of the Hamilton Central Metropolitan Area (CMA). Beamsville, which lies on the western edge of the St. Catharines – Niagara CMA, is located approximately 10 kilometres away from Grimsby.
2. At a public hearing beginning on 28 November 2017 in Toronto, Ontario, which was announced in Broadcasting Notice of Consultation 2017-316, the Commission considered separate applications by Byrnes Communications Inc. (Byrnes), Dufferin Communications Inc. (Dufferin), a wholly owned subsidiary of Evanov Communications Inc., and Durham Radio Inc. (Durham) for a broadcasting licence to operate a new FM radio station to serve Grimsby and Beamsville.
3. The Commission assessed the applications according to the criteria set out in Broadcasting Notice of Consultation 2016-451. In Broadcasting Decision 2018-237, the Commission approved Durham's application for a broadcasting licence to operate an English-language commercial radio station to serve those communities, to be known as CKLK-FM Grimsby and Beamsville, and denied the applications submitted by Dufferin and Byrnes.

¹ The call for applications followed the filing by Dufferin Communications Inc. of an application for a broadcasting licence to operate a commercial radio station to serve Grimsby and Beamsville. Following the receipt of that application, the Commission called for comments on the capacity of Grimsby and Beamsville to support a new station and whether it should issue a call for applications to serve that market. In Broadcasting Decision 2016-450, the Commission indicated that there was room to license at least one radio station to serve the communities, and in Broadcasting Notice of Consultation 2016-451, it called for applications.

4. The service proposed by Durham has yet to launch. The original deadline for the commencement of operations was 11 July 2020. However, in Broadcasting Administrative Decision L2020-22, dated 20 May 2020, the Commission administratively approved an application by Durham to extend that deadline until 11 July 2021. In a letter decision dated 27 May 2021, the Commission administratively granted a second and final extension until 11 July 2022.²
5. In Broadcasting Decision 2020-252, the Commission denied an application by Durham to change the authorized contours of CKLK-FM. In that case, Durham had submitted that the originally approved transmitter site would not allow CKLK-FM to provide adequate coverage for the market it would be licensed to serve. In rendering its decision, the Commission determined that
 - Durham did not demonstrate a compelling technical need for the requested technical changes;
 - the requested technical changes did not represent an appropriate solution to the alleged coverage issues;
 - the proposed technical changes could have had an undue economic impact on the Hamilton market; and
 - approval of the technical changes would undermine the Commission's licensing process.

Application

6. The Commission has the authority, pursuant to subsection 9(1) of the *Broadcasting Act* (the Act), to issue 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, and to amend any conditions on application of the licensee.
7. Durham filed an application to change the authorized contours of its unlaunched radio station CKLK-FM by changing the class from A to B1, increasing the maximum effective radiated power (ERP) from 4,000 to 5,000 watts, decreasing the average ERP from 2,000 to 1,150 watts, increasing the effective height of the antenna above average terrain from 6 to 124 metres and amending the existing coordinates of the transmitter site.
8. Durham stated that the currently authorized technical parameters do not provide adequate coverage for a portion of the communities that the station is licensed to serve. It submitted that the amended parameters would allow the unlaunched station to provide full coverage to the licensed area without covering adjacent markets.

² All broadcasting administrative decisions issued by the Commission are available upon request for public examination at the Commission's central office.

Interventions and reply

9. The Commission received several interventions in support of this application, as well as an intervention opposing the application from Byrnes, licensee of the English-language commercial radio stations CFLZ-FM Fort Erie and CJED-FM Niagara Falls, Ontario, to which Durham replied.

Issues

10. After examining the record for this application in light of applicable regulations and policies, the Commission considers that it must address the following issues:
 - whether Durham has demonstrated a compelling economic or technical need justifying the requested technical changes;
 - whether the requested technical changes represent 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 economic or technical need

11. When the licensee of a radio station files an application for a technical change, the Commission generally expects the licensee to present compelling technical or economic evidence justifying the requested change. Applications are considered 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.
12. Durham, in its application, did not cite an economic need for the proposed technical changes and indicated that approval of those technical changes would not have a material impact on its financial projections. Accordingly, the Commission assessed the current application on the basis of the merits of the application and Durham's cited need, which was technical in nature.
13. Durham submitted that CKLK-FM's signal, given the approved technical parameters, would not adequately serve the communities the station is licensed to serve. It noted that the requested technical changes are intended to improve reception within Grimsby by expanding coverage to more fully include the community within the station's primary service contour and improve its signal quality within its currently authorized coverage area.

14. Durham further submitted that because of additional equipment loading on the tower, it is necessary to use an antenna height that is lower than the approved baseline. The applicant added that the professional engineer for its application did not believe that lowering the antenna on the tower would allow the station to serve the entire community of Grimsby.
15. Although a broadcasting licence was granted to Durham to serve the communities of Grimsby and Beamsville, approval of its original application was for the new station to serve its proposed market (i.e., its primary service contour), which did not fully encompass the community of Grimsby.³ In regard to the current application, Durham did not provide evidence that the approved service contour was adversely affected.
16. Further, Durham did not provide theoretical coverage maps using the lower antenna height. Rather, the maps it provided as part of this application showed the same contours that were approved by the Commission in Broadcasting Decision 2018-237 and, therefore, did not show any technical deficiencies. Consequently, no new coverage considerations were identified that were not already considered as part of the original licensing process for CKLK-FM.
17. Of particular importance in assessing the present application is the fact that CKLK-FM has not yet begun operations and has not conducted on-air testing. This means that Durham's claims are theoretical. An applicant citing signal deficiencies as the basis of technical need for a requested technical change will normally submit to the Commission complaints from listeners or field measurements to substantiate that need. Given that CKLK-FM has not yet launched, there are no listeners to identify or field measures to indicate whether there are, in fact, problems relating to the reception of the station's signal. Consequently, at this time, it is not possible for Durham to provide evidence that the signal as approved would not adequately serve the communities CKLK-FM is licensed to serve, and therefore demonstrate a need to expand the station's coverage beyond its licensed area.
18. 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

19. Given the Commission's determination that Durham has not demonstrated a compelling technical need for the requested technical changes that would address potential deficiencies with CKLK-FM's originally approved primary service contour, the Commission finds that an assessment of the appropriateness of the applicant's proposed technical solution is not necessary.

³ The *Radio Regulations, 1986* define a station's market as the 3 mV/m contour or the central area as defined by the Bureau of Broadcast Measurement (now known as Numeris), whichever is smaller. In regard to CKLK-FM, the 3 mV/m contour is the smaller of the two and the station's market includes part of Grimsby and not its entirety.

Appropriate use of spectrum

20. Given that the applicant is not proposing the use of an alternate frequency, the Commission finds that Durham's application represents an appropriate use of spectrum.

Impact on incumbent stations

21. Byrnes, the licensee of CFLZ-FM and CJED-FM, which operate in markets near Grimsby and Beamsville, submitted that the proposed technical changes would expand CKLK-FM's reach outside of its licensed markets and into the more lucrative markets of St. Catharines, Niagara-on-the-Lake, Thorold, the outskirts of Welland and Niagara Falls. The intervener argued that this would fragment audiences in these markets and have an undue negative financial impact on CFLZ-FM and CJED-FM. Byrnes added that it would support Durham's application if the Commission imposed a condition of licence requiring CKLK-FM to refrain from soliciting or accepting local advertising from the communities located within CJED-FM's primary (i.e., 3 mV/m) service contour.⁴
22. In its reply, Durham noted that Byrnes's conclusions are based on the secondary (i.e., 0.5 mV/m) contours of the stations concerned, whereas a station's market is determined by the primary contour. It further noted that CKLK-FM's primary contour does not overlap with those of CJED-FM and CFLZ-FM. Durham submitted that its proposed changes would pull back CKLK-FM's primary contour coverage in the St. Catharines and Niagara region. Finally, the application argued that a condition of licence such as that requested by Byrnes should not be imposed when stations in adjoining markets do not have the same limitations.
23. Approval of the proposed technical changes would result in a significant increase in the size of the population served by CKLK-FM, outside of its licensed service area. In addition to reaching almost the entire population of Grimsby and Beamsville, the station's primary service contour would extend into the Hamilton and St. Catharines – Niagara radio markets, both of which have experienced declines in radio advertising revenues over the past five years. However, only a small portion of each market's population would fall within the proposed primary service contour for the station. Further, the Commission does not consider that approval of Durham's requested technical changes would have a financial impact on CJED-FM and CFLZ-FM in particular. These stations are licensed to serve the communities of Niagara Falls and Fort Erie, respectively, both of which are located at the eastern extremity of the St. Catharines – Niagara region, where CKLK-FM's signal would be at its weakest. In addition, the primary contours of either of Byrnes' stations would not overlap with the proposed primary service contour for CKLK-FM.
24. In light of the above, the Commission finds that approval of the requested technical changes would not have an undue negative financial impact on incumbent stations serving neighbouring markets.

⁴ The localities served by CJED-FM include Niagara Falls, St. Catharines, Thorold, Welland and Niagara-on-the-Lake.

25. In regard to Byrnes's proposal regarding the imposition of a condition of licence on CKLK-FM requiring the station to refrain from soliciting or accepting advertising from the St. Catharines – Niagara market, the Commission finds that such a condition of licence would be neither beneficial nor necessary. As set out in the standard condition of licence relating to the solicitation or accepting of local advertising for broadcast by FM radio stations,⁵ to which Durham is subject for CKLK-FM, the licensee of a commercial FM radio station must refrain from soliciting or accepting local advertising for broadcast during any broadcast week when less than one-third of the programming aired is local programming, i.e., programming that is of direct and particular relevance to the community the station is licensed to serve. Given that CKLK-FM was not licensed to serve the St. Catharines – Niagara market, none of the local programming it would eventually broadcast would be directed to that market, which means that Durham would not be permitted to solicit or accept advertising from that market.

Integrity of the Commission's licensing process

26. The Commission expects that for an application for a new radio station being considered as part of a competitive process, the included technical parameters for the proposed station reflect the intended future operation of the station.
27. The maps that Durham submitted as part of its application for the competitive licensing process that led to the Commission's approval in Broadcasting Decision 2018-237 show that the applicant was aware of the signal limitations and that it intended to provide limited coverage of the town of Grimsby. Durham's current application demonstrates that it is actually seeking to alter its original application after the fact by expanding its licensed market outside of the competitive process. Absent a compelling technical or economic need to deviate from what was granted in the competitive licensing process, Durham cannot now amend that application to expand its coverage. Durham's proposal was approved on the basis of the technical parameters presented at the time. It is impossible to know whether the parameters proposed in the current application would have led the Commission to grant a broadcasting licence to Durham had those parameters been submitted as part of the original licensing process.
28. Even if Durham had demonstrated deficiencies in the coverage of its licensed market, the applicant did not include any details on other technical solutions that may have been explored to address CKLK-FM's technical needs while preserving the station's current coverage. In the Commission's view, there may be other solutions that would enable the applicant to improve service to the market CKLK-FM is licensed to serve without shifting away from and beyond that market.
29. In light of the above, the Commission finds that approval of this application would undermine the integrity of the Commission's licensing process.

⁵ See condition of licence 8 set out in the appendix to Broadcasting Regulatory Policy 2009-62.

Conclusion

30. In light of all 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 CKLK-FM Grimsby and Beamsville.
31. As noted above, in Broadcasting Decision 2020-252, the Commission denied an application by Durham to change the authorized contours of CKLK-FM given that the applicant did not demonstrate a compelling technical need for the requested technical changes, that the requested technical changes did not represent an appropriate solution to the alleged coverage issues and could have had an undue economic impact on the Hamilton market, and that approval of the technical changes would undermine the Commission's licensing process. In the Commission's view, only the issue relating to the impact on incumbent stations in adjacent markets was addressed by Durham in the current application.
32. Should Durham wish to propose other technical solutions to address the claimed coverage issues facing CKLK-FM, it may submit a new application to the Commission, which will then be examined on its own merits. In such case, the Commission reminds the licensee that any technical solutions proposed in a future application must address all of the factors that contributed to the Commission's denial in Broadcasting Decision 2020-252 and to the Commission's denial of the current application, including the identification of a properly substantiated technical need in regard to deficiencies with CKLK-FM's approved service contours, and that any technical solution must best reflect the service contours that were originally approved for the station, such that approval of that application would not undermine the integrity of Commission's licensing process.

Secretary General

Related documents

- *CKLK-FM Grimsby and Beamsville – Technical changes*, Broadcasting Decision CRTC 2020-252, 11 August 2020
- *Licensing of a new radio station to serve Grimsby and Beamsville*, Broadcasting Decision CRTC 2018-237, 11 July 2018
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2017-316, 31 August 2017
- *Calls for applications – Radio stations to serve Grimsby and Beamsville, Ontario*, Broadcasting Notice of Consultation CRTC 2016-451, 10 November 2016
- *Findings regarding market capacity and the appropriateness of issuing a call for radio applications to serve Grimsby and Beamsville*, Broadcasting Decision CRTC 2016-450, 10 November 2016
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009