



## Broadcasting Decision CRTC 2024-170

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Reference: 2024-11

Ottawa, 29 July 2024

### **Local Radio Lab. Inc.**

Toronto, Ontario

*Public record: 2023-0565-6*

*Public hearing in the National Capital Region*

*25 March 2024*

## **CIND-FM Toronto – Change in ownership and effective control**

### **Summary**

The Commission approves an application by Local Radio Lab Inc. to change the ownership and control of the English-language commercial radio station CIND-FM Toronto, Ontario. Through this transaction, Local Radio Lab Inc. will acquire from Rock 95 Broadcasting Ltd. the assets necessary to operate CIND-FM.

The Commission finds that approving this transaction is in the public interest and will benefit Toronto listeners. CIND-FM will be operated by another independent licensee who is committed to showcasing emerging Canadian musical artists and providing local programming.

The Commission also approves the applicant's request for a new broadcasting licence to continue the operation of CIND-FM.

### **Application**

1. Local Radio Lab Inc. (Local Radio Lab) on behalf of Rock 95 Broadcasting Ltd. (Rock 95) filed an application for authority to acquire, by way of assets, the English-language commercial radio station CIND-FM Toronto, Ontario from Rock 95. Local Radio Lab also requested a new broadcasting licence to continue the operation of the station under the same terms and conditions as those currently in effect.
2. Local Radio Lab is a Canadian corporation incorporated in Ontario with effective control held by Christopher Grossman, a Canadian. As such, the proposed transaction satisfies the eligibility criteria set out in *Direction to the CRTC (Ineligibility of Non-Canadians)*.<sup>1</sup>

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<sup>1</sup> SOR/97-192, 8 April 1997

3. The purchase price for the assets of the station is \$7 million. Local Radio Lab proposed a value of the transaction of \$8,878,150, which includes the purchase price, the working capital transferred at closing, and the total value of leases payable over five years. Local Radio Lab proposed a tangible benefits package of \$532,680, which represents 6% of the proposed value of the transaction.<sup>2</sup>
4. The Commission did not receive any interventions regarding this application.

### **Regulatory framework**

5. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act*. Obtaining a licence to operate a broadcasting undertaking (in this case, a radio station) is a regulatory privilege granted by the Commission. A licensee does not have the authority to transfer a licence to a new operator as they see fit.
6. For this reason, licensees must obtain the Commission's approval before entering into any action, agreement, or transaction that changes, directly or indirectly, the effective control of the radio station. This requirement is set out in subsection 11(4) of the *Radio Regulations, 1986* (the Regulations).
7. When seeking the Commission's approval, the applicant must demonstrate that the benefits of the transaction are commensurate with the size and nature of the transaction and that the application represents the best possible proposal under the circumstances. The Commission will consider each application on its merits and will approve the transaction if the change in ownership and effective control is in the public interest. The public interest is reflected in the Canadian broadcasting objectives and regulatory policy set out in subsections 3(1) and 5(2) of the *Broadcasting Act*.

### **Issues**

8. After examining the record for this application in light of applicable regulations and policies, the Commission addressed the following issues:
  - whether the proposed transaction would be consistent with the Commission's common ownership policy for radio;
  - whether the proposed transaction would be in the public interest; and
  - the value of the transaction and tangible benefits.

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<sup>2</sup> The applicant proposed a transaction value of \$8,878,150 and a tangible benefits package of \$532,680. However, the tangible benefits package constitutes 6% of the transaction value. Consequently, the amount proposed for tangible benefits should have been \$532,689. There was a discrepancy of \$9.

## **Common ownership policy for radio**

9. The Revised Commercial Radio Policy (Broadcasting Regulatory Policy 2022-332) establishes the Common Ownership Policy for radio.<sup>3</sup> That policy states that, in a market with eight or more commercial radio stations operating in a given language, an operator may be permitted to own or control no more than four stations, with a maximum of three stations within one frequency band (FM or AM) in that language.
10. The Regulations define “market” for an FM station as the primary contour (i.e., the FM 3 mV/m contour) or the central area (CRTL) as defined by Numeris, whichever is smaller in terms of surface area.
11. CIND-FM’s primary contour is smaller than the Toronto central area. Its market is therefore its primary contour.
12. Local Radio Lab currently owns and operates three other English-language radio stations that also serve the Toronto central area: CIMA-FM Alliston, CJML-FM Milton and CKMO-FM Orangeville. These station’s primary contours are also smaller than the Toronto central area. Therefore, their markets are also defined by their primary contours.
13. Although all four stations serve the Toronto central area, none of their markets – in each case, their primary contour - overlap. Accordingly, the Commission finds that each of the four stations serve separate markets such that approval of the application would not violate the Commission’s Common Ownership Policy.

## **Public interest of the proposed transaction**

14. When the Commission evaluates whether a transaction is in the public interest, it examines the extent to which the transaction improves the Canadian broadcasting system and contributes to meeting the policy objectives of the *Broadcasting Act*. Section 3 of that Act describes a broadcasting system that contributes to the creation and presentation of Canadian programming, and through its programming reflects the multicultural and multiracial nature of Canadian society. Furthermore, the programming that the broadcasting system provides should be drawn from local and regional sources and should ensure that a diversity of news voices is offered to the public.
15. Rock 95’s current owner is retiring, and Local Radio Lab would like to continue CIND-FM’s mission of showcasing new Canadian musical talent, as the station is currently required to do under its conditions of service.

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<sup>3</sup> The Common Ownership Policy for radio was first set out in Public Notice 1998-41, and later reviewed and confirmed in Broadcasting Public Notice 2008-4. Broadcasting Information Bulletin 2010-341 sets out the guidelines for the application of that policy, and amendments to the policy are set out in Broadcasting Regulatory Policy 2022-332.

16. Local Radio Lab operates three Ontario radio stations: one in Milton, one in Alliston, and one in Orangeville. Local Radio Lab's sole shareholder, Mr. Grossman has over 40 years' experience as a senior executive with Canada's leading broadcasting companies in Toronto and across Canada. Local Radio Lab's application noted the company's relationships with a digital audio content delivery network, and involvement in advertising insertion and audio trading desk initiatives in connection with radio's continuing digital transition.
17. If licensed, Local Radio Lab would continue to use CIND-FM to showcase emerging Canadian musical talent, prioritize local programming and to employ existing station staff. Local Radio Lab submitted that the station would best serve the community and the broadcasting system if CIND-FM remains independent and locally owned.
18. The Commission notes that the proposed transaction would substitute one independent operator, who is neither vertically integrated with broadcast distribution nor horizontally integrated with a large ownership group, with another. In this sense, the market would continue to be served by a range of editorial voices.
19. In light of the above, the Commission finds that approval of the transaction is in the public interest and will benefit Toronto listeners since the station will be operated by another independent licensee who is committed to showcasing emerging Canadian musical artists and providing local programming.

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

20. The Commission ensures that the public interest is served by requiring that the purchasing company make financial contributions to Canadian content development (CCD) that are proportionate to the size and nature of the transaction. These contributions are known as "tangible benefits." The Commission's policy on tangible benefits is set out in Broadcasting Regulatory Policy 2014-459. Tangible benefits serve the public interest because they increase the quantity and quality of Canadian programming and support the creation, distribution and promotion of such programming. Since the Commission does not solicit competing applications for changes to the ownership or effective control of broadcasting undertakings, the Commission requires that applicants propose tangible benefits when they seek the Commission's approval to change the effective control of radio and television programming services.
21. The amount of tangible benefits payable depends on the value of the transaction. In the case of radio stations, tangible benefits usually amount to not less than 6% of the value of the transaction. The Commission looks at the value of the transaction as a whole, including the value of gross debt, working capital to be transferred at the close of the transaction, ancillary agreements, and any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities. The value of leases is calculated over a period of five years. These elements, if applicable, are added to the purchase price.

22. Local Radio Lab proposed a value of the transaction of \$8,878,150. This amount included the purchase price (\$7,000,000), the working capital transferred at closing (\$750,000) and the total value of the leases payable over five years (\$1,128,150). However, in the purchase and sale agreement, the \$750,000 for the target working capital was already included in the purchase price of \$7,000,000. As a result, Local Radio Lab has included the amount for the proposed working capital twice in its calculations. The total amount should be adjusted so that the proposed working capital is included only once.
23. Based on the financial statements of the licensee dated 31 August 2023, the Commission calculated the working capital by taking the current assets (including accounts receivable and prepaid expenses) minus current liabilities (including accounts payable and accrued liabilities). The amount of working capital in the most recent financial statement is therefore \$958,563, which is \$208,563 over the proposed amount of \$750,000 already included in the purchase price. Therefore, the Commission determines that the purchase price, including the target working capital, is \$7,000,000, and that the working capital adjustment represents an additional \$208,563.
24. Regarding the payable leases over five years, the amount of \$1,128,150 provided by the applicant is accurate. There is no assumed debt transferred at closing.
25. In light of the above, the Commission determines that the value of the transaction is \$8,336,713, itemized as follows, and requires a tangible benefits package of \$500,203.

Purchase Price including the initial target working capital	\$7,000,000
Debt	\$0
Assumed leases over five years	\$1,128,150
Revised working capital	\$208,563
<b>Value of the transaction</b>	<b>\$8,336,713</b>

#### **Allocation of tangible benefits**

26. In the Revised Commercial Radio Policy, the Commission stated that the 6% tangible benefits formula should be maintained. It specified, however, that of the 3% of benefits previously allocated to the Radio Starmaker Fund (now known as the Canadian Starmaker Fund) or Fonds RadioStar, 60% must now be directed to the Canadian Starmaker Fund and 40% to Fonds RadioStar. Further, of the 1.5% of benefits previously allocated to FACTOR or Musicaction, 60% must now be directed to FACTOR and 40% must be directed to Musicaction.

27. As indicated above, the Commission has revised the value of the transaction so that it totals \$8,336,713. Accordingly, the Commission determines that the tangible benefits package should amount to \$500,203, which is 6% of the revised value of the transaction. The tangible benefits contributions must be paid in equal installments over seven consecutive broadcast years. In accordance with the Revised Commercial Radio Policy, contributions are to be allocated as follows:

- 3% (\$250,101) to Canadian Starmaker Fund and Fonds RadioStar;
  - 60% (\$150,061) to Canadian Starmaker Fund
  - 40% (\$100,040) to Fonds Radiostar
- 1.5% (\$125,051) to FACTOR and Musicaction;
  - 60% (\$75,031) to FACTOR
  - 40% (\$50,020) to Musicaction
- 1% (\$83,367) to any eligible Canadian content development initiative at the discretion of the purchaser; and
- 0.5% (\$41,684) to the Community Radio Fund of Canada.

## **Conclusion**

28. In light of all of the above, the Commission approves the application by Local Radio Lab Inc. for authority to change the ownership and effective control of the English-language commercial radio programming undertaking CIND-FM Toronto, Ontario, by acquiring, by way of the assets necessary to operate it, CIND-FM from Rock 95. The Commission will issue a new broadcasting licence to Local Radio Lab to continue of the operation of CIND-FM under the same terms and conditions as those currently in effect.

29. Further, the Commission requires Local Radio Lab to pay tangible benefits in the amount of \$500,203, to be paid in equal instalments over seven consecutive broadcast years.

30. Local Radio Lab shall notify the Commission of the close of the transaction, and upon surrender of the licence currently held by Rock 95, the Commission will issue a new broadcasting licence to Local Radio Lab, which will expire on 31 August 2026. That is the same expiry date as that of the current licence.

## **Conditions of service**

31. Given that the applicant proposed to operate CIND-FM under the same terms and conditions as those in effect under the current licence, the Commission makes the following orders consistent with the existing conditions of service.

32. The Commission notes that it updated the standard conditions of service for commercial FM radio stations in Broadcasting Regulatory Policy 2022-334. As a result, the Commission considers it appropriate to require Local Radio Lab to adhere to these updated standard conditions so that CIND-FM's conditions are consistent with those of other FM stations.
33. Further, pursuant to subsection 49(2) of the *Online Streaming Act*, any regulation made under paragraphs 10(1)(a) or 10(1)(i) of the old *Broadcasting Act* is deemed to be an order made under section 9.1 of the new *Broadcasting Act*. As a result, the Commission considers it appropriate to require that the licensee adhere to these requirements as conditions of service.
34. Accordingly, the Commission **orders** Local Radio Lab Inc., by **condition of service**, to adhere to the standard conditions of service for commercial FM radio stations set out in the appendix to Broadcasting Regulatory Policy 2022-334, as well as to all applicable requirements set out in the Regulations, that were made under paragraphs 10(1)(a) or 10(1)(i) of the old *Broadcasting Act*.
35. In addition, consistent with the other existing conditions of service related to this station, the Commission orders Local Radio Lab Inc., by **condition of service**, to
- devote, in each broadcast week, a minimum of 40% of its musical selections from content category 2 (Popular Music) to Canadian selections;
  - devote, between 6 a.m. and 6 p.m., each week, a minimum of 40% of its musical selections from content category 2 (Popular Music) to Canadian selections;
  - devote a minimum of 60% of the Canadian musical selections required under a) or b) above to musical selections by emerging Canadian artists; and
  - provide additional information in its music lists as identified.
36. The Commission notes that this application, including the proposed conditions of service, were subject to a public proceeding that provided both the applicant and other interested parties notice of and an opportunity to make representations with respect to the proposed conditions of service. The Commission is satisfied that, in this case, the public proceeding was sufficient to achieve the purposes of the publication and consultation requirement set out in subsection 9.1(4) of the *Broadcasting Act*.
37. The terms as well as the specifics of these conditions of service are set out in the appendix to this decision.
38. Finally, the Commission notes that the formal broadcasting licence document issued to a licensee may set out additional requirements for the undertaking, relating to, for example, technical parameters or prohibition on transfer. The licensee shall, therefore, also adhere to any such requirements set out in the broadcasting licence for the undertaking.

## Reminders

### Force and effect of broadcasting certificates

39. Pursuant to section 22 of the *Broadcasting Act*, the broadcasting licence will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry (also known as Innovation, Science and Economic Development Canada) lapses.

### Local news

40. Radio stations are an important daily source of local news and information for communities. Carrying on a broadcasting undertaking comes with conditions, regulatory obligations and responsibilities, which include contributing to the Canadian broadcasting system by ensuring that Canadians have access to local programming that reflects their needs and interests and informs them of important current issues.
41. Although the Revised Commercial Radio Policy does not specify a minimum level of weekly news to be broadcast, it does specify the type of spoken word material that must be included as part of a station's local programming. In accordance with that regulatory policy, the Commission reminds the licensee that its station, in its local programming, must incorporate spoken word material of direct and particular relevance to the communities served, and that this programming must include local news, weather, sports coverage, and the promotion of local events and activities. In addition, the Commission encourages the licensee to ensure that a reasonable amount of daily local news and information is made available to those communities.

Secretary General

### Related documents

- *Revised conditions of licence for commercial AM and FM radio stations*; Broadcasting Regulatory Policy CRTC 2022-334, 2 December 2022
- *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Revised guidelines for the application of the Common Ownership Policy for Radio*, Broadcasting Information Bulletin 2010-341, 4 June 2010
- *Regulatory Policy – Diversity of Voices*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Commercial Radio Policy 1998*, Broadcasting Public Notice CRTC 1998-41, 30 April 1998

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

## Appendix to Broadcasting Decision CRTC 2024-170

### Terms, conditions of service, expectations and encouragements for the English-language commercial radio programming undertaking CIND-FM Toronto, Ontario

#### Terms

The licence will expire 31 August 2026.

#### Conditions of service

1. The licensee shall adhere to the conditions of service set out in the appendix to *Revised conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2022-334, 7 December 2022. Further, the licensee shall adhere to the requirements set out in the broadcasting licence for the undertaking.
2. The licensee shall adhere to all applicable requirements set out in the *Radio Regulations, 1986*, that were made under paragraph 10(1)(a) or under paragraph 10(1)(i) of the old *Broadcasting Act*.
3. The licensee shall devote, as an exception to the percentage of Canadian musical selections set out in sections 2.2 (8) and 2.2 (9) of the *Radio Regulations, 1986* (the Regulations):
  - (a) in each broadcast week, a minimum of 40% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety;
  - (b) between 6 a.m. and 6 p.m., in any period beginning on Monday of a week and ending on Friday of the same week, a minimum of 40% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety; and
  - (c) a minimum of 60% of the Canadian musical selections required under a) and b) above to musical selections by emerging Canadian artists.

To facilitate verification of compliance with this condition of service, the licensee shall specify on the music lists it provides to the Commission pursuant to section 9 (3) of the Regulations:

- (i) those musical selections it categorizes as being by an emerging Canadian artist; and
- (ii) for each musical selection so categorized, the additional following information where applicable:
  - for English-language musical selections, if a recording by the artist has appeared in one of the charted positions referenced in paragraph 5

of *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011, the title of that recording and the date it first reached the relevant position; and

- for French-language musical selections, if an album by the artist has reached Gold Record status according to SoundScan or has been marketed commercially, the date this status was first reached, or the album was released for marketing and the title of the album.

For the purposes of this condition, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meanings as those set out in the Regulations. The term “emerging Canadian artist” shall have the meaning set out in *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011.

## **Expectations**

### **Cultural diversity**

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

### **Indigenous musical selections**

Consistent with the Commission’s determination set out in *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022 (Broadcasting Regulatory Policy 2022-332), the Commission expects the licensee to include Indigenous musical selections on the station’s playlist. The licensee should report annually on the amount of Indigenous content aired on the station throughout the broadcast year (i.e., from 1 September to 31 August), including the percentage of Indigenous musical selections out of the total number of musical selections that were aired, and the number of distinct artists whose music has been aired. The licensee should also be able to provide, upon request, information such as a list of all titles, artists, and International Standard Recording Code (ISRC) numbers.

For the purposes of the above paragraph, the licensee may use the provisional definition of “Indigenous-Canadian musical selection” set out in paragraph 441 of Broadcasting Regulatory Policy 2022-332 to determine whether a musical selection can be considered an Indigenous musical selection.

### **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 in its hiring practices and in all other aspects of its management of human resources.