Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting Decision CRTC 2011-364

PDF version

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Ottawa, 8 June 2011

Haliburton Broadcasting Group Inc.
Niagara Falls, Fort Erie and St. Catharines, Ontario

Application 2010-1871-3, received 17 December 2010
Public hearing in the National Capital Region
17 May 2011

CFLZ-FM Niagara Falls and CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines – Acquisition of assets

The Commission ***approves*** *the application by Haliburton Broadcasting Group Inc. (Haliburton) for authority to acquire from Niagara Radio Group Inc. the assets of the English-language commercial radio stations CFLZ-FM Niagara Falls and CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines and for broadcasting licences to continue the operation of the undertakings under the same terms and conditions as those in effect under the current licences.*

The Commission directs Haliburton to fulfill the shortfalls in CFLZ-FM's and CKEY-FM's Canadian content and talent development contributions for previous broadcast years up to and including the 2009-2010 broadcast year by 31 August 2011.

The application

1. The Commission received an application by Haliburton Broadcasting Group Inc. (Haliburton) for authority to acquire from Niagara Radio Group Inc. the assets of the English-language commercial radio programming undertakings CFLZ-FM Niagara Falls and CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines. The applicant also requested broadcasting licences to continue the operation of the undertakings under the same terms and conditions as those in effect under the current licences. The Commission received an intervention in support of this application.

2. Haliburton is controlled by Mr. Christopher Grossman through his ownership and control of Beaumaris Group Inc., Haliburton's controlling shareholder.

3. Based on the terms of the asset purchase and sale agreement dated 29 November 2010, the purchase price is $5.5 million. The applicant proposed to pay

a tangible benefits package of $330,000, representing 6% of the purchase price, to be spent over seven broadcast years as follows:

- $165,000 to the Radio Starmaker Fund;
- $82,500 to FACTOR;
- $55,000 to any of the above initiatives, other Canadian content development initiatives or other eligible third parties; and
- $27,500 to the Community Radio Fund of Canada.

Commission's analysis and determinations

4. The Commission notes that the applicant has committed to make the above-noted contributions even though this transaction meets the Commission's general practice of foregoing its benefit requirements in the case of transactions involving the sale of unprofitable undertakings.[1] In light of the above, the Commission is satisfied that it would be appropriate to accept the tangible benefits package as proposed by the applicant and directs Haliburton to allocate the corresponding benefits as set out above.

Provision of annual reports

5. As set out in section 9(2) of the *Radio Regulations, 1986* (the Regulations), licensees are required to file their annual report for a given broadcast year by 30 November of that same broadcast year. The Commission notes that CFLZ-FM's annual reports for the 2007-2008, 2008-2009 and 2009-2010 broadcast years were filed past the 30 November deadline.

Contributions to the development of Canadian content and talent

CFLZ-FM

6. The Commission's records also indicate that CFLZ-FM made no Canadian talent development (CTD) expenditures in the 2007-2008 broadcast year. Furthermore, the Commission's records indicate that no Canadian content development (CCD) payments were made in the 2008-2009 and 2009-2010 broadcast years. This represents a total shortfall of $6,000 for these broadcast years.

CKEY-FM

7. The Commission notes that no CCD payments were made by CKEY-FM for the 2008-2009 and 2009-2010 broadcast years. This represents a total shortfall of $1,500 for these broadcast years.

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[1] See *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, Public Notice CRTC 1993-68, 26 May 1993.

8. In light of the above, the Commission directs Haliburton to fulfill the shortfalls in CFLZ-FM's and CKEY-FM's CTD/CCD contributions totaling $7,500 by 31 August 2011. The Commission notes that Haliburton has agreed to this shortfall payment.

Conclusion

9. The Commission **approves** the application by Haliburton Broadcasting Group Inc. for authority to acquire from Niagara Radio Group Inc. the assets of the English-language commercial radio programming undertakings CFLZ-FM Niagara Falls and CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines. Upon surrender of the current licences, the Commission will issue new licences to Haliburton Broadcasting Group Inc. under the terms and **conditions** set out in the appendix to this decision.

10. Further, in accordance with *Revised approach to non-compliance by radio stations,* Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011, the Commission considers that a short-term licence period for CFLZ-FM and CKEY-FM would be appropriate. This short-term licence period will enable the Commission to review the licensee's compliance with the Regulations and its conditions of licence. Accordingly, the licences will expire 31 August 2015, which coincides with the expiry date of the current licences.

Secretary General

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

Appendix 1 to Broadcasting Decision CRTC 2011-364

Terms, conditions of licence and encouragement for CFLZ-FM Niagara Falls

Terms

The licence will expire 31 August 2015.

Conditions of licence

1. The licence will be subject 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.

2. The licensee shall, 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), in any broadcast week where at least 90% of musical selections from content category 2 that it broadcasts are selections released before 1 January 1981:

    a) devote 30% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety; and

    b) between 6 a.m. and 6 p.m., in the period beginning on Monday of that week and ending on Friday of the same broadcast week, devote 30% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

    The licensee will also be responsible for specifying on the music lists it provides to the Commission the year of release for all musical selections it broadcasts.

    For purposes of this condition, the terms "broadcast week," "content category" and "musical selection" shall have the meanings set out in section 2 of the Regulations.

Encouragement

Employment equity

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 2011-364

Terms, conditions of licence and encouragement for CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines

Terms

The licence will expire 31 August 2015.

Conditions of licence

1. The licence will be subject 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.

2. During each broadcast week, the licensee shall broadcast no less than three hours of news programming. Of this amount, a minimum of 30% (54 minutes) each week must be devoted to local news of direct and particular relevance to Fort Erie and the Niagara region.

Encouragement

Employment equity

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.