



Broadcasting Decision CRTC 2018-23

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References: 2017-316 and 2017-316-1

Ottawa, 22 January 2018

Kenneth Collin Brown
Barriere, British Columbia

Public record for application 2017-0437-0
Public hearing in Toronto, Ontario
28 November 2017

CHLW-FM Barriere – Acquisition of assets

*The Commission **approves** an application by Kenneth Collin Brown for authority to acquire from Stephen Guay the assets of the low-power, English-language commercial radio station CHLW-FM Barriere and for a broadcasting licence to continue the operation of the station, which will expire 31 August 2022.*

Application

1. Kenneth Collin Brown filed an application for authority to acquire from Stephen Guay the assets of the low-power, English-language commercial radio station CHLW-FM Barriere, British Columbia. The applicant also requested a new broadcasting licence to operate CHLW-FM under the same terms and condition of licence as those in effect under the current licence. The Commission did not receive any interventions regarding this application.
2. Mr. Brown is a Canadian pursuant to the *Direction to the CRTC (Ineligibility of Non-Canadians)*, and as such is eligible to hold a broadcasting licence.
3. Pursuant to the Agreements of Sale, Mr. Brown would purchase the assets of the station for \$20,000.
4. Following the closing of the transaction, Mr. Brown would become the licensee of CHLW-FM.
5. In Broadcasting Notice of Consultation 2017-316, the Commission noted that the current licensee, Mr. Guay, is in apparent non-compliance with section 9(2) of the *Radio Regulations, 1986* (the Regulations), relating to the filing of annual returns, for the 2013-2014 through 2015-2016 broadcast years.

Regulatory framework

6. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act* (the Act). Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, 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.
7. The Commission must consider each application on its merits, based on the circumstances specific to the application. In addition, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest as expressed in the objectives set out in section 3(1) of the Act.

Issues

8. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that it must address the following issues:
 - whether approval of the proposed transaction would undermine the integrity of the Commission's licensing process;
 - whether the proposed transaction would be in the public interest;
 - the value of the transaction and tangible benefits; and
 - the length of the new licence term to be granted to CHLW-FM in light of the current licensee's apparent non-compliance.

Integrity of the Commission's licensing process

9. In Broadcasting Public Notice 2008-4, the Commission stated that the sale of a newly licensed broadcasting undertaking brings into question the original licensing process. However, in Broadcasting Information Bulletin 2010-220, the Commission stated that the integrity of the licensing process is not undermined when the transaction involves a broadcasting licence granted through a non-competitive process or when it involves a service that has been in operation for more than two years.
10. In Broadcasting Decision 2013-667, the Commission granted Mr. Guay, through a non-competitive process, a broadcasting licence to operate a radio station in Barriere that would launch as CHLW-FM. Further, CHLW-FM launched in January 2014 and has therefore been in operation for more than two years. Accordingly, the Commission finds that approval of the present transaction would not undermine the integrity of its licensing process.

Public interest

11. In Broadcasting Decision 2013-667, the Commission stated that the service proposed by Mr. Guay for Barriere would benefit not only the audience for that local radio station, but also local businesses in Barriere and neighbouring communities, providing them with a local medium to reach their potential customers. The Commission further stated that the proposed service, which would be the first local radio station in Barriere, would provide a greater diversity of voices for listeners in that community as well as increased musical diversity through a blend of pop, light rock, country and standard hits music, not available in the market at that time.
12. In regard to the present application, Mr. Brown indicated that Mr. Guay wishes to retire from the broadcasting industry. Given that the proposed transaction would ensure the continued operation of CHLW-FM, the Commission finds that approving the application would be in the public interest.

Value of the transaction and tangible benefits

13. Pursuant to Broadcasting Regulatory Policy 2014-459 (the tangible benefits policy), for commercial radio stations, tangible benefits must generally represent at least 6% of the value of the transaction, to be allocated to the Radio Starmaker Fund or Fonds Radiostar (3%), FACTOR or MUSICACTION (1.5%), any eligible Canadian content development (CCD) initiative at the discretion of the purchaser (1%), and the Community Radio Fund of Canada (CRFC) (0.5%). The value of a transaction includes the purchase price, assumed long-term debts, and assumed leases for real property (buildings, studios, offices and transmission facilities) calculated over a period of five years.
14. Mr. Brown proposed a tangible benefits package of \$1,200, based on a value of the transaction of \$20,000 (the purchase price). However, as noted above, the value of the transaction must also include assumed leases, which in the present case are valued at \$24,000 over five years. Accordingly, the value of the transaction as determined by the Commission is \$44,000, and the tangible benefits would therefore amount to \$2,640 (6% of \$44,000). In response to a Commission letter dated 17 July 2017, Mr. Brown agreed to pay the increased tangible benefits amount.
15. Consistent with the tangible benefits policy, the Commission **directs** Kenneth Collin Brown to pay tangible benefits amounting to \$2,640, to be allocated as follows in equal annual payments over seven consecutive broadcast years:
 - 3% (\$1,320) to Radio Starmaker Fund or Fonds Radiostar;
 - 1.5% (\$660) to FACTOR or MUSICACTION;
 - 1% (\$440) to any eligible CCD initiative at the discretion of the purchaser; and
 - 0.5% (\$220) to the CRFC.

Length of the new licence term to be granted to CHLW-FM Barriere in light of the apparent non-compliance

16. 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 quantity, recurrence and seriousness of the 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.
17. Pursuant to section 9(2) of the Regulations, licensees are required to file, by no later than 30 November of each year, their annual return for the broadcast year ending the previous 31 August. Failure to file these returns, in whole or in part, by the above deadline may result in a finding of non-compliance.
18. In regard to CHLW-FM, the financial statements for the 2013-2014 broadcast year were received on 7 June 2017, 31 months following the prescribed deadline, whereas the annual returns for the 2014-2015 and 2015-2016 broadcast years were filed 16 and 4 months late, respectively.
19. Mr. Brown stated that the current licensee was under the impression that all returns had been filed and was doing his best to understand the Commission's annual filing system (Data Collection System, or DCS). He added that he is well aware of the importance of filing annual returns on time. To ensure that all future annual returns are filed in a timely manner, the applicant indicated that he has set reminders in his and the station's bookkeepers' calendars.
20. In light of above, the Commission finds the current licensee in non-compliance with section 9(2) of the Regulations for the 2013-2014 through 2015-2016 broadcast years. Consequently, the Commission will issue a new licence for CHLW-FM that will expire 31 August 2022. This short-term renewal will allow for an earlier review of the new licensee's compliance with regulatory requirements.

Conclusion

21. In light of all of the above, the Commission **approves** the application by Kenneth Collin Brown for authority to acquire from Stephen Guay the assets of the low-power, English-language commercial radio programming undertaking CHLW-FM Barriere, British Columbia.
22. Upon surrender of the current licence issued to Stephen Guay, the Commission will issue a new broadcasting licence to Kenneth Collin Brown expiring 31 August 2022. The licensee shall adhere to the **conditions** set out in Broadcasting Regulatory Policy 2009-62, as well as to the conditions set out in the broadcasting licence for the undertaking.

Cultural diversity

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

Employment equity

24. In accordance with Public Notice 1992-59, 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.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2017-316, 31 August 2017
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Low-power commercial FM radio station in Barriere*, Broadcasting Decision CRTC 2013-667, 10 December 2013
- *Revised criteria for the application of the licence trafficking policy*, Broadcasting Information Bulletin CRTC 2010-220, 19 April 2010
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009
- *Diversity of Voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992

This decision is to be appended to the licence.