



Broadcasting Decision CRTC 2023-366

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Reference: 2023-129

Ottawa, 15 November 2023

Tsi Tyónnheht Onkwawén:na Language and Cultural Centre
Tyendinaga Mohawk Territory, Ontario

Public record: 2023-0058-1

Public hearing in the National Capital Region
6 July 2023

Indigenous FM radio station in Tyendinaga Mohawk Territory

Summary

The Commission **approves** an application by Tsi Tyónnheht Onkwawén:na Language and Cultural Centre for a broadcasting licence to operate an English- and Kanyen'kéha-language Indigenous (Type B Native) FM radio station in Tyendinaga Mohawk Territory, Ontario.

Application

1. Tsi Tyónnheht Onkwawén:na Language and Cultural Centre (TTO) filed an application for a broadcasting licence to operate an English- and Kanyen'kéha-language (Mohawk language) Indigenous (Type B Native)¹ FM radio station in Tyendinaga Mohawk Territory, Ontario.
2. TTO is a not-for-profit corporation whose core mandate is the revitalization of Kanyen'kéha for the betterment of the community.
3. The station will operate at 89.5 MHz (channel 208A) with an effective radiated power (ERP) of 2,100 watts (non-directional antenna with an effective height of the antenna above average terrain [EHAAT] of 52.1 metres).
4. TTO proposed to offer 126 hours of programming each broadcast week, including 119 hours of local programming and seven hours of wrap-around programming.
5. The Commission received one intervention in support of this application by the National Campus and Community Radio Association and one intervention in comment.

¹ Type B Native stations, as defined in Public Notice 1990-89, are referred to as Indigenous stations in this decision.

6. Furthermore, TTO submitted a letter of support from the Tyendinaga Mohawk Council as part of its application.

Issues

7. The Commission has the authority, pursuant to subsections 9(1) and 9.1(1) of the *Broadcasting Act*, to issue and renew licences and to make orders imposing conditions on the carrying on of a broadcasting undertaking that it considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*.
8. After examining the record for this application in light of the applicable regulations and policies, the Commission considers that it must address the following issues:
 - whether the applicant's ownership structure satisfies the requirements of the *Direction to the CRTC (Ineligibility of non-Canadians)* (the Direction) and the Commission's policy for Indigenous stations set out in Public Notice 1990-89 (the Policy);
 - whether the use of the proposed frequency would represent an appropriate use of spectrum;
 - whether this application satisfies the provisions for Indigenous radio stations set out in the Policy, as well as the relevant policy objectives at subsection 3(1) of the *Broadcasting Act*; and
 - whether approval of this application would have an undue economic impact on incumbent stations.

Ownership structure

9. The Direction provides that no broadcasting licence may be issued, and no amendments or renewals thereof may be granted, to an applicant that is non-Canadian.
10. As set out in the Policy, an Indigenous undertaking is owned and controlled by a not-for-profit organization whose structure provides for board membership by the Indigenous population of the region served.
11. TTO is a not-for-profit corporation controlled by its board of directors. TTO's by-laws provide for board membership by community members of the Tyendinaga Mohawk Territory. TTO indicated that the chief executive officer and all members of the board of directors are residents of Ontario and possess a Certificate of Indian Status, which is issued by the Government of Canada.
12. In light of the above, the Commission considers that TTO is in compliance with the Direction and, as such, is eligible to hold a broadcasting licence. The Commission

also considers that TTO's ownership structure is consistent with the definition of Indigenous undertaking as set out in the Policy.

Appropriate use of spectrum

13. The Department of Industry (also known as Innovation, Science and Economic Development Canada) has granted conditional technical acceptability of the proposed station. As such, the applicant's proposal adheres to the rules governing FM spectrum coordination.
14. The use of the proposed frequency would remove its availability from the surrounding areas. However, the Commission has identified multiple other frequencies that are capable of providing similar or greater coverage to that proposed by the applicant. As such, 89.5 MHz is not the last frequency available to serve the Tyendinaga Mohawk Territory.
15. In light of the above, the Commission finds that the use of the proposed frequency 89.5 MHz by the applicant for its proposed radio station would represent an appropriate use of spectrum.

Provisions for Indigenous radio stations

16. As set out in the Policy, the Commission expects the programming of Indigenous radio stations to be specifically oriented to the interests and needs of the Indigenous audiences that the stations are licensed to serve. These stations have a distinct role in addressing the specific cultural and linguistic needs of their audiences and creating an environment in which Indigenous music and spoken word creators can develop and flourish.
17. Further, subsection 3(1) of the *Broadcasting Act* places particular emphasis on Indigenous programming and Indigenous languages. Specifically, subparagraphs 3(1)(d)(iii) and (iii.1) provide that the Canadian broadcasting system should, through its programming and the employment opportunities arising out of its operations, service the needs and interests of all Canadians and reflect their circumstances and aspirations, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Indigenous Peoples and languages within that society. The Canadian broadcasting system should also provide opportunities to Indigenous Peoples to produce programming in Indigenous languages, English or French, or in any combination of them, and to carry on broadcasting undertakings. Subparagraph 3(1)(i)(ii.2) provides that the programming provided by the Canadian broadcasting system should reflect the importance of Indigenous language revitalization by supporting the production and broadcasting of Indigenous-language programming.
18. In its application, TTO stated that Kanyen'kéha is at a critical state in Tyendinaga. TTO proposed to work in various ways to reverse the decline of Kanyen'kéha by offering language learning content geared to different age groups and various proficiency levels. Through its other programming, the proposed station would also

allow its audience to hear the language spoken, which TTO considered an important and effective mean to promote and assist with the learning and use of Kanyen'kéha.

19. Furthermore, TTO stated that it conducted community engagement activities to share information and gather input about the proposed radio station, which generated excitement and positive feedback among community members. TTO noted that it has begun conducting outreach to various community organizations, groups and departments to inform them of the plans for the proposed radio station.
20. The Commission acknowledges the applicant's commitment to local reflection, to broadcasting original programming and to furthering the preservation of Indigenous language and cultures through the broadcast of programming that would be offered in the Kanyen'kéha language.
21. The Commission also considers that the broadcast of such programming would not only further the objectives set out in the *Broadcasting Act*, but would also be consistent with the Government of Canada's commitment to support the reclamation, revitalization, maintenance and strengthening of Indigenous languages, as set out in the *Indigenous Languages Act*.
22. Consistent with the standard requirement to broadcast Canadian music identified in Public Notice 2001-70, the applicant also committed to devote a minimum of 35% of content category 2 (Popular Music) musical selections broadcast during each broadcast week to Canadian selections, which includes musical selections from Indigenous creators residing in Canada.
23. In light of the above, the Commission finds that the application is consistent with the provisions for Indigenous radio stations set out in the Policy, Public Notice 2001-70 and the policy objectives set out in the *Broadcasting Act*.

Economic impact on incumbent stations

24. The Tyendinaga Mohawk Territory is located on the Bay of Quinte in southeast Ontario. The proposed station's primary contour would overlap with the primary contours of five commercial radio stations, including one commercial specialty (Religious music) radio station.
25. The incumbent stations had an average profit before interest and taxes (PBIT) margin around 5% between the 2017-2018 and the 2021-2022 broadcast years, despite negative PBIT margin in the 2021-2022 broadcast year.
26. TTO stated that it would rely on funding from government grants/funding, advertising revenues, fundraising, private donations, and the Tyendinaga Mohawk Council.
27. Given the nature of the service, the Commission finds that approval of this application would not have an undue economic impact on incumbent stations in the market.

Conclusion

28. In light of all of the above, the Commission **approves** the application by TTO for a broadcasting licence to operate an English- and Kanyen'kéha-language Indigenous (Type B Native) radio programming undertaking in Tyendinaga Mohawk Territory, Ontario. The Commission fixes the licence term at seven years.

Conditions of service

29. The Commission notes that there are standard conditions of service which apply to all undertakings of a particular class. In this case, the Commission considers it appropriate that the licensee should adhere to the standard conditions of service for Indigenous radio stations.

30. Accordingly, and pursuant to subsection 9.1(1) of the *Broadcasting Act*, the Commission **orders** Tsi Tyónnheht Onkwawén:na Language and Cultural Centre, by **condition of service**, the specifics of which are set out in the appendix, to

- devote, in each broadcast week, no less than 35% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety;
- adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code* and the *Broadcast Code for Advertising to Children* if the licensee creates 42 or more hours of original programming in any broadcast week; and
- implement the National Public Alerting System by the station's launch date to comply with the various related requirements and to file a letter with the Commission attesting to the implementation date within 14 days after the installation.

31. The Commission also notes that, pursuant to subsection 49(2) of the *Online Streaming Act*, which made a certain number of amendments to the *Broadcasting Act* when it came into force on 27 April 2023, 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*.

32. Accordingly, and pursuant to subsection 9.1(1) of the *Broadcasting Act*, the Commission **orders** Tsi Tyónnheht Onkwawén:na Language and Cultural Centre, by **condition of service**, to adhere to all applicable requirements set out in the *Radio Regulations, 1986* (the Regulations), that were made under paragraphs 10(1)(a) or 10(1)(i) of the old *Broadcasting Act*.

33. The Commission notes that this application, including the proposed conditions of service, was subject to a public proceeding which provided both the licensee and other interested parties notice of and an opportunity to make representations with respect to the particular conditions of service. The Commission is satisfied that, in this case, this 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*.

34. The terms as well as the specifics of the conditions of service identified above are set out in the appendix to this decision.
35. 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 prohibitions on transfer. The licensee shall therefore also adhere to any such requirements set out in the broadcasting licence for the undertaking.

Reminders

36. The licensee must comply at all times with the Regulations.
37. The Commission has implemented obligations in respect of the broadcast of emergency alerts. For reference, see section 16 of the Regulations as well as Broadcasting Regulatory Policy 2014-444. Compliance involves implementing the public alerting system for each of the licensee's transmitters, and ensuring that any alert broadcast decoders (e.g., ENDEC) used for the purposes of broadcasting emergency alert messages be installed and programmed to properly account for the applicable contour (as set out in paragraph 16(2)(b) of the Regulations) of the station as well as that of any rebroadcasting transmitter that may appear on the licence for that station.

Secretary General

Related documents

- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014
- *Changes to conditions of licence for certain native radio undertakings*, Public Notice CRTC 2001-70, 15 June 2001
- *Native Broadcasting Policy*, Public Notice CRTC 1990-89, 20 September 1990

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2023-366

Terms, conditions of service, and encouragement for the Indigenous radio programming undertaking in Tyendinaga Mohawk Territory, Ontario

Terms

The licence will expire 31 August 2030.

The station will operate at 89.5 MHz (channel 208A) with an effective radiated power (ERP) of 2,100 watts (non-directional antenna with an effective height of the antenna above average terrain [EHAAT] of 52.1 metres).

Pursuant to subsection 22(1) of the *Broadcasting Act*, no licence may be issued until the Department of Industry (also known as Innovation, Science and Economic Development Canada) notifies the Commission that its technical requirements have been met and that a broadcasting certificate will be issued.

Furthermore, the Commission will only issue a licence for this undertaking once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before **15 November 2025**. To ensure that such a request is processed in a timely manner, it should be submitted in writing at least 60 days before this date.

Conditions of service

1. The licensee shall devote, in each broadcast week, no less than 35% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety.

For the purposes of this condition of service, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meaning as those set out in the *Radio Regulations, 1986*. A musical selection by an Indigenous creator who resides in Canada is considered a Canadian selection.

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. If the licensee creates 42 or more hours of original programming in any broadcast week, the licensee shall adhere to the Canadian Association of Broadcasters’ *Equitable Portrayal Code*, as amended from time to time and approved by the Commission, and to the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

4. The licensee shall implement the National Public Alerting System (NPAS) by **the station's launch** in the manner set out in subsection 16(2) of the *Radio Regulations, 1986*, and in *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014. As part of this requirement:

The licensee must file a letter with the Commission to attest to the implementation date of its NPAS within **14 days after** the installation of the alerting equipment. This letter must contain evidence that the system is properly configured to receive and distribute alerts from the National Alert Aggregation and Dissemination System (e.g., an attestation by a chief executive officer, president or person exercising a similar supervisory role in the licensee's operations, as to the installation of a functioning alerting equipment).

Encouragement

Where the licensee intends to provide wrap-around programming, the Commission encourages it to use programming from another Indigenous station or network.