Broadcasting Decision CRTC 2015-521

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Reference: 2015-366

Ottawa, 24 November 2015

9238476 Canada Inc.
Salaberry-de-Valleyfield, Quebec

Application 2015-0585-1, received 10 June 2015
Public hearing in the National Capital Region
21 October 2015

CKOD-FM Salaberry-de-Valleyfield – Acquisition of assets

The Commission ***approves****, with changes, an application by 9238476 Canada Inc. (Torres Media) for authority to acquire from Radio Express Inc. the assets of the French-language commercial radio station CKOD-FM Salaberry-de-Valleyfield, Quebec, and for a broadcasting licence to continue the operation of the station.*

This transaction serves the public interest as it will ensure the continued existence of the only local radio station in Salaberry-de-Valleyfield.

Application

1. 9238476 Canada Inc. (Torres Media) filed an application for authority to acquire from Radio Express Inc. (Radio Express) the assets of the French-language commercial radio station CKOD-FM Salaberry-de-Valleyfield, Quebec, and for a broadcasting licence to continue the operation of the station under the same terms and conditions as those in effect under the current licence. The Commission did not receive any interventions regarding this application.

2. Torres Media is owned by Ed Torres Family Trust (43%), Mr. Frank Torres Family Trust (43%), Mr. Todd Bernard (9%) and Mr. Mr. Yves Trottier (5%). Effective control of Torres Media is exercised by Mr. Mr. Ed Torres.

3. Radio Express is wholly owned and controlled by Mr. Robert Brunet. In a decision letter dated 8 May 2015, the Commission approved an application by Torres Media for authority to exercise interim management of CKOD-FM.

4. Following the transaction, Torres Media will become the licensee of CKOD-FM.

5. According to the asset purchase agreement, the purchase price amounts to $250,000. Torres Media asked the Commission for an exception to the requirement to pay tangible benefits as part of this transaction.

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 the merits of each application, 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 of the Canadian broadcasting policy set out in section 3(1) of the Act.

Commission's analysis and decisions

8. From 2005 to 2009, the Commission granted short-term licence periods[1] to Radio Express for CKOD-FM due to numerous instances of non-compliance with the Commission's regulatory requirements (non-payment of Canadian content development (CCD) contributions, failure to submit logger tapes and failure to file annual returns).

9. CKOD-FM is the only local radio station in Salaberry-de-Valleyfield and was off air for several months at the beginning of 2015. The station resumed operations in May 2015 when Torres Media obtained authorization for interim management of the station.

10. Torres Media has operated an English-language FM radio station, CIDG-FM Ottawa, since 2010. Further, Mr. Ed Torres and Mr. Frank Torres, the two majority shareholders in Torres Media, also recently launched an FM radio station in Uxbridge, Ontario.[2] They also own SkyWords Media, a network that provides content to radio stations in addition to providing advertising services. Moreover, Mr. Trottier, one of Torres Media's shareholders, worked for Radio Express from 1994 to 2003 and is familiar with the Salaberry-de-Valleyfield radio market.

11. Torres Media committed to provide a high-quality local service by broadcasting regional news bulletins eight times a day, as well as daily live interviews with regional newsmakers. In addition, the purchaser indicated that it had invested in CKOD-FM to bring it into compliance (including purchasing a logger tape recording device) and that it planned to make further significant investments to improve the station's programming and equipment.

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[1] See Broadcasting Decisions 2005-49, 2006-353, 2007-159 and 2009-549.

[2] See Broadcasting Decision 2012-201.

12. The Commission considers that Torres Media's experience in and knowledge of the Salaberry-de-Valleyfield market would bring stability and management discipline to CKOD-FM, which would contribute to its long-term viability. The Commission considers that this transaction would serve the public interest as it would ensure the continued existence of the only local radio station in Salaberry-de-Valleyfield.

13. The Commission's decision that the proposed transaction is in the public interest is based on an assessment of the transaction in light of the regulatory framework set out above. In examining the proposed transaction, the Commission also focused on the following issues:

- the value of the transaction;
- the exception requested regarding the payment of tangible benefits; and
- CKOD-FM's non-compliance.

Value of the transaction

14. Pursuant to the terms of the asset purchase agreement, the purchase price for this transaction is $250,000. In addition, Torres Media will take on the leases for the studios ($86,040 over five years) and the transmission facilities ($65,220 over five years).

15. In accordance with Broadcasting Regulatory Policy 2014-459 (the tangible benefits policy) and the Commission's general practice for determining the value of the transaction, the Commission has included the total value of the leases being assumed by the purchaser ($151,260) and has determined that the value of the transaction is $401,260, as set out below:

Value of the transaction

Purchase price	$250,000
Assumed leases	$151,260
Total	**$401,260**

Exception requested regarding the payment of tangible benefits

16. The tangible benefits policy states that there may be situations in which the public interest is sufficiently met without the payment of tangible benefits. However, to qualify for this exception, the applicant must satisfy all of the following criteria:

- the undertaking to be acquired is not in its first licence term (many undertakings take up to one full term from the time of licensing to achieve profitability);

- the undertaking has suffered significant financial losses over an extended period of time (that is, at least five consecutive years following the first licence term); and

- the purchaser demonstrates that there is a public interest either for the broadcasting system as a whole or the community served in maintaining the failing undertaking.

17. In support of its request, Torres Media stated that CKOD-FM had suffered losses over an extended period of time, that it did not generate revenue when it was off air and that investments would be required to improve the station's programming and broadcasting equipment. The purchaser further submitted that it was in the public interest for the station to be operated by a recognized group with experience in the market.

18. After reviewing CKOD-FM's financial statements, the Commission notes that it is a small station and considers, based on its own date, that it has not suffered significant losses over an extended period of time. The Commission also considers that the investments in the station are part of the normal cost of doing business and that Torres Media has not demonstrated that an exception would serve the public interest. Therefore, the Commission determines that Torres Media must pay tangible benefits as part of this transaction.

19. In light of the above, the Commission **requires** Torres Media to make payments to a tangible benefits package amounting to 6% of the value of the transaction (i.e., $24,076), as contemplated in the tangible benefits policy. This amount is to be allocated in equal payments over seven consecutive broadcast years as follows:

- 3% to the Radio Starmaker Fund or Fonds Radiostar;
- 1.5% to FACTOR or MUSICACTION;
- 1% to any eligible CCD initiative at the discretion of the purchaser; and
- 0.5% to the Community Radio Fund of Canada.

CKOD-FM's non-compliance

20. After receiving complaints from Salaberry-de-Valleyfield residents about CKOD-FM's being off air, the Commission sent the current licensee, Radio Express, several requests for clarification[3] by email and registered mail. Since Radio Express did not reply to those requests, it is in non-compliance with section 9(4) of the *Radio Regulations, 1986* (the Regulations), which states that licensees must respond to any Commission request for information regarding adherence to regulatory requirements.

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[3] Dated 27 November 2014, 18 December 2014, 20 January 2015 and 2 March 2015

21. In the context of the present application, the Commission asked the purchaser to explain why the station was in non-compliance with section 9(4) of the Regulations. The purchaser was also informed that the station was in apparent non-compliance with section 15(2) of the Regulations regarding basic CCD contributions. Specifically, Radio Express omitted to pay $500 (60% of which was to be directed to MUSICACTION) for each of the 2010-2011, 2011-2012 and 2012-2013 broadcast years, amounting to a total shortfall of $1,500.

22. In its reply letter dated 17 July 2015, the purchaser stated that it could not comment on this information as it had barely begun interim management of the station, but that it committed to pay the shortfall in CCD contributions following approval of the transaction and would accept a short-term licence renewal if deemed appropriate by the Commission.

23. 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 in question, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.

24. Although the instances of non-compliance took place under the management of Radio Express, the Commission considers it appropriate to require Torres Media to pay the $1,500 shortfall in CCD contributions to MUSICACTION and/or to an eligible initiative as defined in paragraph 108 of Broadcasting Public Notice 2006-158 by **24 December 2015**. In addition, by **7 January 2016** and in a form deemed acceptable by the Commission, Torres Media is to file proof of payment of this contribution, as well as documents demonstrating the eligibility of any part of the contribution not paid to MUSICACTION. A **condition of licence** to this effect is set out in the appendix to this decision.

25. Further, the Commission considers it appropriate to grant Torres Media a short-term licence expiring 31 August 2020. This short-term renewal will allow for an earlier review of the licensee's compliance with the Regulations, while permitting the purchaser to adequately relaunch the station's operations.

Conclusion

26. In light of all of the above, the Commission **approves**, with changes, the application by 9238476 Canada Inc. for authority to acquire from Radio Express Inc. the assets of the French-language commercial radio programming undertaking CKOD-FM Salaberry-de-Valleyfield and for a broadcasting licence to continue the operation of the station.

27. Upon surrender of the current licence issued to Radio Express inc., the Commission will issue a new broadcasting licence to 9238476 Canada Inc., expiring 31 August 2020. The terms and **conditions of licence** are set out in the appendix to this decision.

Secretary General

Related documents

- *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
- *English-language FM radio station in Uxbridge*, Broadcasting Decision CRTC 2012-201, 3 April 2012
- *Licence renewals*, Broadcasting Decision CRTC 2010-890, 30 November 2010
- *CKOD-FM Salaberry-de-Valleyfield – Licence renewal*, Broadcasting Decision CRTC 2009-549, 31 August 2009
- *CKOD-FM Salaberry-de-Valleyfield – Licence renewal and issuance of a mandatory order*, Broadcasting Decision CRTC 2007-159, 31 May 2007
- *CKOD-FM Salaberry-de-Valleyfield – Licence renewal and issuance of mandatory orders*, Broadcasting Decision CRTC 2006-353, 10 August 2006
- *CKOD-FM Valleyfield – Licence renewal and issuance of a mandatory order*, Broadcasting Decision CRTC 2005-49, 10 February 2005

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

Appendix to Broadcasting Decision CRTC 2015-521

Terms, conditions of licence and encouragement for the French-language commercial radio programming undertaking CKOD-FM Salaberry-de-Valleyfield, Quebec

Terms

The licence will expire on 31 August 2020.

Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in *Conditions of licence for commercial AM and FM radio stations,* Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, as well as to the conditions set out in the broadcasting licence for the undertaking.

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:

    - devote, in that broadcast week, a minimum of 55% of its musical selections from content category 2 (Popular Music) to Canadian Selections broadcast in their entirety; and

    - devote, between 6:00 a.m. and 6:00 p.m., in the period from Monday to Friday of the same broadcast week, 55% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

    For the purposes of this condition of licence, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meanings as those set out in the Regulations.

3. To address the previous licensee’s Canadian content development contribution shortfall, the licensee shall, by **24 December 2015**, make a payment of $1,500 to MUSICACTION and/or to an eligible initiative as defined in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006. In addition, by **7 January 2016** and in a form deemed acceptable by the Commission, the licensee shall file proof of payment of this contribution, as well as documents demonstrating the eligibility of any part of the contribution not paid to MUSICACTION.

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