



Broadcasting Decision CRTC 2017-78

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Reference: 2016-465

Ottawa, 21 March 2017

Gimaa Giigidoowin Communications M'Chigeeng, Ontario

Applications 2015-0961-3 and 2016-1052-7, received 25 August 2015 and 26 September 2016

*Public hearing in the National Capital Region
16 February 2016*

CHYF-FM M'Chigeeng – Acquisition of assets

*The Commission **approves** an application by Gimaa Giigidoowin Communications for authority to acquire from Anong Migwans Beam the assets of the English- and Aboriginal-language Type B Native radio station CHYF-FM M'Chigeeng, Ontario, and for a broadcasting licence to continue the operation of the station.*

This transaction will benefit listeners in M'Chigeeng, as CHYF-FM promotes the cultural and linguistic needs of the community it serves. Accordingly, it serves the public interest and furthers the objectives for the Canadian broadcasting system set out in the Broadcasting Act.

Applications

1. On 25 August 2015, Anong Migwans Beam (Anong) filed an application (2015-0961-3) to renew the broadcasting licence for the English- and Aboriginal-language Type B Native radio station CHYF-FM M'Chigeeng, Ontario, which was set to expire on 31 August 2016. Upon review of the application, it became apparent that Anong had sold the assets of the undertaking to the not-for-profit corporation Gimaa Giigidoowin Communications (Gimaa) without obtaining the Commission's prior approval.¹ Anong was therefore instructed to file an application regarding the acquisition of assets of CHYF-FM and the issuance of a new licence to Gimaa. In the interim, the Commission administratively renewed the licence for CHYF-FM from 1 September 2016 to 31 August 2017 in Broadcasting Decision 2016-169.
2. Subsequently, on 26 September 2016, Gimaa filed an application (2016-1052-7) for authority to acquire the assets of CHYF-FM from Anong and for a broadcasting licence

¹ Section 11(4)(a) of the *Radio Regulations, 1986* requires a licensee to obtain the Commission's prior approval in respect of any act, agreement or transaction that directly or indirectly would result in a change, by whatever means, of the effective control of its undertaking.

to continue the operation of the station under the same terms and conditions as those in effect under the current licence.

3. The Commission received interventions in support of these applications.
4. Gimaa is a not-for-profit corporation controlled by its board of directors. Following completion of the transaction, Gimaa would become the licensee of CHYF-FM, and the effective control of CHYF-FM would be exercised by Gimaa's board of directors.

Regulatory framework

5. 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.
6. 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

7. After examining the public record for these applications in light of applicable regulations and policies, the Commission considers that it must address the following issues:
 - Is Gimaa eligible to own the assets of the Native radio station CHYF-FM?
 - What should be the length of the new licence term granted to CHYF-FM in light of the instances of apparent non-compliance?

Eligibility of Gimaa

8. When considering an application for a change in the ownership of a Native broadcasting undertaking, the Commission is guided by the regulatory framework for aboriginal broadcasting set out in Public Notice 1990-89 (the Native Policy). According to the Native Policy, a Native undertaking must be owned and controlled by a not-for-profit organization whose structure provides for board membership by the Native population of the region served. In rendering its decision, the Commission also takes into account a wide set of factors reflected in the Act, including the nature of programming and service to the communities involved, as well as regional, social, cultural, economic and financial considerations.

9. Gimaa is a not-for-profit corporation, and its board of directors is composed of members of the Native population of the region served. Further, Gimaa is Canadian-owned and controlled, and is incorporated under the *Canada Not-for-profit Corporations Act*.²
10. Given the foregoing, the Commission finds that Gimaa is eligible to own the assets of CHYF-FM and to operate the station.

Length of licence term and non-compliance

Annual returns

11. Section 9(2) of the *Radio Regulations, 1986* (the Regulations) requires licensees to file an annual return by 30 November of each year for the broadcast year ending the previous 31 August. The specific filing requirements, including the requirement to submit financial statements, are set out in Broadcasting Information Bulletin 2011-795.
12. In addition, since 2015, licensees have been required to file annually, as part of their annual returns, Form 1411 – Emergency Alert Implementation Report, which requests information regarding the steps broadcasters and broadcasting distribution undertakings (BDUs) have taken to ensure compliance with alerting requirements (such as implementing the National Public Alerting System (NPAS)) set out in Broadcasting Regulatory Policy 2014-444.
13. In Broadcasting Notice of Consultation 2016-465, the Commission stated that the licensee of CHYF-FM was in apparent non-compliance with section 9(2) of the Regulations relating to the filing of annual returns. Specifically, Anong did not file the annual returns for the 2010-2011, 2011-2012 and 2012-2013 broadcast years. In addition, the annual returns for the 2013-2014 and 2014-2015 broadcast years were filed late.
14. Further, according to Commission records, CHYF-FM's annual return for the 2014-2015 broadcast year was filed incomplete because Form 1411 was missing.
15. In a letter dated 21 October 2016, Gimaa explained that the station was off the air for an extended period of time following equipment damage sustained from a storm. It stated that its radio staff had not realized that the annual returns, including Form 1411, still had to be submitted even if the station was not in operation.
16. The station has since affiliated itself with the National Campus and Community Radio Association to obtain additional information relating to its regulatory obligations and has assigned its radio program director with the task of completing CRTC forms.
17. In light of the above, the Commission finds the licensee (Anong, at the time) in non-compliance with section 9(2) of the Regulations for the 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 broadcast years regarding the filing of annual returns.

² S.C. 2009, c.23

National Public Alerting System

18. Pursuant to sections 16(2) and 16(3) of the Regulations, radio broadcasters were required to implement, by no later than 31 March 2015, an operational public alerting system on all stations that they are licensed to operate. In the case of campus, community and Native stations, the deadline for the implementation of the system was 31 March 2016.
19. The Commission has expressed its view that the broadcasting system plays a vital role in the provision of emergency alert messages to Canadians. Given that holding a broadcasting licence is a privilege, broadcasters and BDUs have a duty to inform the public of imminent perils. This is at the core of the public service obligations of all broadcasters.
20. In its letter dated 21 October 2016, Gimaa indicated that it had secured funding and purchased the equipment needed to implement the NPAS. It added that the equipment would be installed as soon as possible, pending delivery.
21. Based on Gimaa's comments, it appears that the station's public alerting system was not implemented by the 31 March 2016 deadline. The Commission therefore finds the licensee (Anong, at the time) in non-compliance with sections 16(2) and 16(3) of the Regulations regarding the implementation of the NPAS.

Length of licence term

22. 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, the arguments provided by the licensee, and the actions taken to rectify the situation are also considered.
23. Compliance with the deadlines for the filing of complete annual returns is important because it enables the Commission to monitor a licensee's performance and compliance with the Regulations and its conditions of licence.
24. As set out in Broadcasting Regulatory Policy 2014-554, for stations that are in or appear to be in non-compliance, the following measures may be applied on a case-by-case basis depending on the nature of the non-compliance:
 - renew the licence for a short term;
 - impose additional conditions of licence;
 - call the licensee to a public hearing to respond to and discuss apparent non-compliance;
 - following a public hearing, issue a mandatory order requiring the licensee to comply with regulatory requirements;

- suspend the licence;
- not renew the licence; and
- revoke the licence.

25. In that same policy, the Commission introduced further measures to address the potential harm that could be caused to the broadcasting system by non-compliance with various regulations and conditions of licence.
26. Given the seriousness of the instances of non-compliance, and since this is the first time that the station has been found in non-compliance, the Commission finds it appropriate to grant CHYF-FM a new broadcasting licence for a short-term period of five years.

Conclusion

27. In light of all of the above, the Commission **approves** the application by Gimaa Giigidoowin Communications for authority to acquire from Anong Migwans Beam the assets of the English- and Aboriginal-language Type B Native radio programming undertaking CHYF-FM M'Chigeeng, Ontario, and for a broadcasting licence to continue the operation of the station.
28. Upon surrender of the current licence issued to Anong Migwans Beam, the Commission will issue a new broadcasting licence to Gimaa Giigidoowin Communications expiring 31 August 2022. The terms and **conditions of licence** are set out in the appendix to this decision.
29. In light of the decision to issue a new broadcasting licence to Gimaa Giigidoowin Communications, no further action is required with respect to Anong Migwans Beam's licence renewal application (2015-0961-3).
30. As set out in the appendix to this decision, the Commission expects the licensee to provide the Commission with proof of the implementation of the NPAS or the date by which it anticipates implementing the NPAS within 30 days of the date of this decision.

Reminder

31. The Commission reminds CHYF-FM that a transaction resulting in a change in effective control requires prior approval from the Commission.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2016-465, 28 November 2016
- *CHYF-FM M'Chigeeng – Administrative renewal*, Broadcasting Decision CRTC 2016-169, 4 May 2016
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *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
- *Filing annual returns for radio programming undertakings*, Broadcasting Information Bulletin CRTC 2011-795, 20 December 2011
- *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 2017-78

Terms, conditions of licence, expectation and encouragement for the English- and Aboriginal-language Type B Native radio programming undertaking CHYF-FM M'Chigeeng, Ontario

Terms

The licence will expire 31 August 2022.

Conditions of licence

1. The licensee shall devote, in each broadcast week, at least 35% of its musical selections from content category 2 (Popular Music) to Canadian musical selections broadcast in their entirety.
2. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission.
3. The licensee shall adhere to the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

Expectation

The Commission expects the licensee to provide the Commission with proof of implementation of the National Public Alerting System (NPAS) or the date by which it anticipates implementing the NPAS, by no later than **20 April 2017**

Encouragement

Should the licensee wish to broadcast wrap-around programming after its daily sign-off, the Commission encourages the licensee to use programming obtained from another Native radio station or network.