Broadcasting Decision CRTC 2020-389

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Reference: 2020-262

Ottawa, 2 December 2020

Akash Broadcasting Inc.
Edmonton, Alberta

Public record for this application: 2020-0281-4
Public hearing in the National Capital Region
13 October 2020

CKER-FM Edmonton – Acquisition of assets

The Commission ***approves*** *an application by Akash Broadcasting Inc. for authority to acquire the assets of the ethnic commercial specialty radio station CKER-FM Edmonton and to obtain a new broadcasting licence to continue the operation of the station.*

The Commission ***denies*** *the applicant's request for an exception to the payment of tangible benefits as set out in Broadcasting Regulatory Policy 2014-459.*

Application

1. Akash Broadcasting Inc. (Akash) filed an application for authority to acquire from Rogers Media Inc. (Rogers) the assets of the ethnic commercial specialty radio station CKER-FM Edmonton, Alberta. Akash also requested a new broadcasting licence to continue the operation of the undertaking under the same terms and conditions as those in effect under the current licence.

2. Akash is held by Herkiranjeet Kaur Mann and Tejinderpaul Singh Saini. Both are Canadians, and they are the only members of Akash's board of directors. Akash is ultimately controlled by Herkiranjeet Kaur Mann, who holds 80% of the voting shares. Akash does not currently operate any other radio stations in Edmonton, Alberta.

3. For the purchase of the assets of CKER-FM, Akash proposed a transaction value of $6,777,153 including the purchase price and the cost of assumed leases. Because of the economic impact of the COVID-19 pandemic, the applicant requested an exception to the payment of tangible benefits as provided in Broadcasting Regulatory Policy 2014-459 (the Policy).

4. Following the close of the transaction, Akash would become the licensee of CKER-FM.

Interventions

5. The Commission received 20 interventions in support of the application from CJCN-FM Surrey listeners and potential advertising partners from the Edmonton region. Interveners indicated that they would benefit from Akash commencing operations in Edmonton given that it has successfully connected individuals, families, organizations and communities in Surrey, British Columbia, via the commercial ethnic specialty radio station CJCN-FM.

6. The Commission also received a joint intervention in opposition to the request for an exception to the tangible benefits requirements from Canadian Media Producers Association, Music Publishers Canada and Canadian Independent Music Association (CMPA et al.).

Regulatory framework

7. Pursuant to section 5(1) of the *Broadcasting Act* (the Act), the Commission's mandate is to regulate and supervise all aspects of the Canadian broadcasting system in the public interest. When the Commission assesses whether a transaction is in the public interest, it considers the extent to which the transaction enhances the Canadian broadcasting system and contributes to the achievement of the objectives of the broadcasting policy for Canada, as set out in section 3(1) of the Act. The review of ownership transactions in the public interest forms part of the Commission's regulatory and supervisory mandate under the Act.

8. 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. 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.

9. The Commission has the authority, pursuant to section 9(1) of the Act, to issue and renew licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee as it deems appropriate for the implementation of the broadcasting policy set out in section 3(1) of the Act.

Commission's analysis and decisions

10. 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 the transaction is in the public interest;
    - the value of the transaction;
    - tangible benefits; and
    - issuance of a new broadcasting licence.

Public interest

11. Since the Commission does not solicit competing applications for changes to the ownership or effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, consistent with the overall objectives of the Act.

Akash's position

12. Over the past 40 years, CKER-FM has played a fundamental role in the development of specialized programming in Edmonton to serve at least 12 ethnic language groups including Arabic, Cantonese, Filipino, German, Italian, Mandarin, Polish, Punjabi, Spanish and Ukrainian.

13. Since its entrance in the broadcasting industry through its ownership and operation of CJCN-FM Surrey, Akash has expressed a continuing commitment to multilingual and multicultural broadcasting in Canada. Akash plans to extend this commitment to CKER-FM.

14. Akash noted that CKER-FM is the only ethnic specialty radio station operated by Rogers. Rogers acknowledged that very few synergies exist with its OMNI Edmonton television station despite its focus on multilingual content. Akash would be able to establish synergies between CJCN-FM and CKER-FM in the areas of research, programming, news, sales and production—all of which contribute to the long-term viability of the station.

15. Herkiranjeet Kaur Mann owns multiple businesses in Edmonton. Akash would leverage her knowledge of the community and market to enhance the station's service to its audience as well as its revenue.

Interventions

16. The Commission received 20 supporting interventions. CMPA et al.'s opposition was restricted to the matter of tangible benefits and did not comment on the transaction or whether its approval is in the public interest.

Commission's analysis and decision

17. In previous decisions, the Commission has recognized the role that CKER-FM plays in the Edmonton market as a significant source of ethnic programming.[1]

18. The Commission acknowledges Akash's commitment to continue operating CKER-FM under the existing terms and conditions of licence, as well as its strong interest in operating CKER-FM for the benefit of the Edmonton market.

19. The Commission also notes the strong support conveyed through the interventions by CJCN-FM listeners. The Commission views this as a positive endorsement of Akash's ability to serve CKER-FM listeners. The Commission is also of the view that Akash would represent a strong independent voice in the Edmonton radio market.

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[1] See Broadcasting Decision 2017-3.

20. In light of the above, the Commission considers that approval of the transaction would be in the public interest.

Value of the transaction

21. As set out in the Policy, the Commission determined that it would be appropriate to require that tangible benefits generally be provided as part of a change in the effective control of all radio and television stations. To calculate the value of tangible benefits, the Commission takes into account the value of the transaction as a whole, including the value of gross debt assumed, working capital to be transferred at closing, ancillary agreements and any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities. The value of leases is calculated over 60 months. These elements are then added to the purchase price, where applicable.

22. Akash's proposed transaction value of $6,777,153 includes the purchase price as well as assumed leases for the office and equipment, transmission services, and tower and transmitter equipment. However, the value of the leases for the office and equipment and the transmitter link were calculated for a period of 30 days.

23. In a letter dated 8 July 2020, the Commission provided an adjusted transaction value to include the leases calculated over five years. Akash responded that the existing leases for the office and equipment and the transmitter link are limited to a maximum period of three months (i.e., a 30-day term, renewable at the option of the purchaser for up to two additional 30-day terms). The applicant provided an adjusted transaction value that included these leases calculated over three months.

24. In a letter dated 29 July 2020, the Commission asked the applicant whether alternate premises or an alternate transmitter had been agreed upon. Akash replied that these leases were initiated on a time-limited basis to enable it to secure alternate commercial agreements as soon as possible. Akash indicated that it planned to relocate CKER-FM to a more affordable area, farther from the downtown Edmonton core.

25. The Commission notes that Akash did not provide any information on alternate premises or transmitter links or on the value of these leases. In accordance with the Policy, the Commission calculates the value of leases over a five-year period, even if the leases expire before the five-year period, since a lease is a method used to finance the assets of an undertaking. In the absence of precise plans to replace the current assumed leases and given that these leases are essential to continue the operation of the station, the Commission will use the five-year values of the current leases.

26. In light of the above, the Commission determines that the revised value of the transaction amounts to $7,564,803.

Tangible benefits package

27. As set out in the Policy, commercial enterprises typically purchase commercial undertakings because they anticipate that such acquisitions will ultimately serve their financial interests. In

their estimation, despite the possible risks, the long-term benefit, whether strategic or purely financial, will outweigh those risks.

28. In the absence of a competitive licensing process for transfers of ownership or control of radio or television services, the Commission generally requires purchasers to make significant and unequivocal financial contributions to the broadcasting system as a whole and to the communities served by the services in question. These contributions, known as tangible benefits, are defined as direct financial contributions that are made to Canadian content development and represent at least 6% of the value of a transaction for radio services.

29. The Policy provides an exception to the payments of tangible benefits. In such cases, the onus is on the applicant to demonstrate that the exception is in the public interest. The Policy sets out the following three criteria that should be met for an exception to be granted:

    i. 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);

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

    iii. 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.

30. The Policy also states that the Commission may use its discretion at all times and that an exception will not necessarily be granted even if the three criteria are met.

Akash's position

31. Akash argued that the deleterious impact of the COVID-19 pandemic on the economy warrants an exception to the payment of the tangible benefits resulting from the proposed transaction. The applicant submitted that the radio sector is particularly vulnerable to the current circumstances, since the majority of radio revenue comes from local and regional advertising.

32. Akash stated that the three criteria that the Commission uses to determine whether an exception is warranted consider only the undertaking's previous financial performance and do not address current extraordinary circumstances. With regard to the second criterion, Akash noted that while CKER-FM's 2019 financial statements show a marginal profit, this retrospective financial information cannot be used to effectively forecast the financial performance of the station in the midst of the pandemic. The applicant filed a comparison of CKER-FM's sales revenues for 2019 and 2020, which showed a significant decline in the first four months of 2020.

33. With regard to the third criterion concerning how an exception would be in the public interest, Akash stated that its commitment to CKER-FM and its mandate, employees and listeners remains steadfast. Akash wishes to establish itself as a broadcaster in Edmonton and is willing to take on the responsibility wholeheartedly. It acknowledges that this commitment will be more challenging given the impact of the COVID-19 pandemic on the economy.

Intervention and reply

34. In its intervention, CMPA et al. submitted that Akash's request for an exception to the requirements of the Policy should be denied because this would not be in the public interest. Granting this exception would also set a precedent for other applications made during the COVID-19 pandemic and any future economic downturns.

35. CMPA et al. indicated that the request meets only one of the three criteria for an exception. CKER-FM is not in its first licence term; therefore the first criterion is met. However, criteria two and three are not met. The station has not suffered significant financial losses over an extended period of time (i.e., over at least five consecutive years). Further, Akash is unable to demonstrate that maintaining the failing undertaking is in the public interest because the undertaking is not failing.

36. CMPA et al. acknowledged that the pandemic has resulted in a financial crisis but argued that CKER-FM, and commercial radio stations in general, are not the only ones feeling the effects. Canada's creative communities and community radio sector (i.e., the intended recipients of tangible benefits) are also deeply affected by the current economic crisis.

37. In its reply, Akash reiterated that the COVID-19 pandemic has had a dramatically negative impact not only on the advertising revenues of Canadian broadcasters, but also on the viability of many of the local businesses whose advertising expenditures form the core element of radio operators' business model. Akash stated that these are extraordinary circumstances and that additional financial obligations should not be imposed.

38. Akash further argued that many of the members of CMPA et al. will benefit from recent emergency funding measures implemented by the Government of Canada. It submitted that an exception would be consistent with the emergency funding measures that are available to the members represented by the Canadian Media Producers Association, Music Publishers Canada and Canadian Independent Music Association.

Commission's analysis and decision

39. The Commission finds that Akash's application meets the first criterion for an exception to the Policy, since CKER-FM is not in its first licence term.

40. With regard to the second criterion, the Commission notes that while the applicant has experienced some financial losses, it has not suffered significant losses for an extended period of time: it has been profitable in the previous five consecutive years. The applicant has also indicated that it will be in a position to achieve significant synergies between CJCN-FM Surrey and CKER-FM in regard to both operations and programming expenses.

41. Therefore, the Commission finds that the applicant does not meet the second criterion for an exception to the Policy.

42. With regard to the third criterion, the Commission notes that the applicant did not argue that the undertaking is failing or at risk of failing. Further taking into account Akash's argument

that synergies could improve the financial situation of CKER-FM, the Commission does not consider it a failing undertaking.

43. Therefore, the Commission finds that the applicant does not meet the third criterion for an exception to the Policy.

44. The Commission acknowledges the economic impact of the COVID-19 pandemic. However, it must balance the needs of other players in the broadcasting system and ensure that the benefits are commensurate with the assets being acquired. In this case, it must also ensure that eligible third-party Canadian content development recipients receiving tangible benefits can also continue to contribute to the broadcasting system.

45. In light of the above, the Commission **denies** Akash’s request for an exception to the payment of tangible benefits as set out in the Policy and **directs** Akash to pay tangible benefits amounting to $453,888, which is 6% of the value of the transaction.

Allocation of tangible benefits

46. Pursuant to the Policy, tangible benefits representing at least 6% of the value of the transaction as determined by the Commission must be allocated to the Radio Starmaker Fund or Fonds Radiostar (3%), FACTOR or Musicaction (1.5%), eligible Canadian content development (CCD) initiatives at the discretion of the purchaser (1%) and the Community Radio Fund of Canada (CRFC) (0.5%). The Commission’s general practice is to allocate payments equally over seven consecutive broadcast years.

47. In response to a letter from the Commission, the applicant indicated that if its request for an exception were denied, the earliest broadcast year in which it could start making tangible benefits payments would be the third year of the licence term (broadcast year 2022-2023).

48. The Commission is of the view that granting a delay in payment until the third consecutive broadcast year is not appropriate. This would significantly delay the disbursement of tangible benefits to recipients and in turn hamper their ability to contribute to the broadcasting system. Further, such a delay would significantly increase the amount payable in those subsequent years when tangible benefits are due. This could become unsustainable for Akash.

49. The Commission recognizes that Akash, as an independent player who does not have the same level of resources to draw from as does the station’s current owner, may have difficulty generating profits. The first few years of operation will undoubtedly be challenging, especially in light of the economic uncertainty during the COVID-19 pandemic and the station’s financial position.

50. The Commission continues to recognize the role that CKER-FM plays in the Edmonton market as a significant source of ethnic programming and that continuity of the station is in the public interest.

51. In light of the above, the Commission will not require the payment of tangible benefits equally over seven consecutive broadcast years in this specific circumstance. The full

payment is still required by the end of the seven-year period. However, the Commission will allow Akash to make lower payments in the first two broadcast years and then require more significant payments in the subsequent five years, as set out in the table below.

Broadcast year	Total yearly amount	Radio Starmaker Fund or Fonds Radiostar	FACTOR or Musicaction	Eligible CCD initiative(s) at the discretion of the purchaser	CRFC
2020-2021	$18,526	$9,263	$4,632	$3,088	$1,543
2021-2022	$18,526	$9,263	$4,632	$3,088	$1,543
2022-2023	$83,367	$41,684	$20,842	$13,894	$6,947
2023-2024	$83,367	$41,684	$20,842	$13,894	$6,947
2024-2025	$83,367	$41,684	$20,842	$13,894	$6,947
2025-2026	$83,367	$41,684	$20,842	$13,894	$6,947
2026-2027	$83,367	$41,684	$20,842	$13,894	$6,947

52. The Commission is of the view that this modified payment schedule will help the station with its transition to new ownership by reducing Akash's operating expenses while it is implementing the programming synergies it seeks to achieve. The Commission is open to Akash seeking further flexibility in the payment schedule if necessary.

New broadcasting licence

53. The broadcasting licence for this station was last renewed in 2019 for a full licence term until 31 August 2026. Since Rogers has not yet had to file an annual return in the current licence term, the Commission has not verified the station's compliance with its obligations. The station's compliance will be reviewed at the next licence renewal.

54. As part of its application, Akash requested a new broadcasting licence to continue operating CKER-FM under the same terms and conditions as those in effect under the current licence. The Commission notes that the current licence does not adequately reflect CKER-FM's status as a commercial specialty radio programming undertaking and requires modifications to ensure clarity.

55. In light of the above, the Commission considers it appropriate to grant the station a new broadcasting licence and modifies the terms and conditions to ensure the licence properly reflects CKER-FM's status as a commercial specialty radio programming undertaking broadcasting ethnic programming.

Conclusion

56. In light of all the above, the Commission **approves** the application by Akash Broadcasting Inc. for authority to acquire from Rogers Media Inc. the assets of the ethnic commercial specialty radio programming undertaking CKER-FM Edmonton and for a new broadcasting licence to continue the operation of the undertaking.

57. In addition, the Commission **denies** Akash's request for an exception to the payment of tangible benefits as set out in Broadcasting Regulatory Policy 2014-459.

58. Further, the Commission **directs** Akash to pay tangible benefits amounting to $453,888 over seven consecutive broadcast years, allocated in accordance with the payment schedule set out in paragraph 51 of this decision, and to submit acceptable proofs of payment.

59. Akash shall notify the Commission of the close of the transaction, and upon surrender of the current licence, the Commission will issue a new broadcasting licence to Akash. The new licence will expire 31 August 2026, the same expiry date as the current licence. The terms and **conditions of licence** for the undertaking are set out in the appendix to this decision.

Secretary General

Related documents

- *Licensing of new radio stations to serve Edmonton*, Broadcasting Decision CRTC 2017-3, 6 January 2017

- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014

This decision is to be appended to the licence.

Appendix to Broadcasting Decision 2020-389

Term, conditions of licence, expectation and encouragement for the commercial ethnic specialty radio programming undertaking CKER-FM Edmonton, Alberta

Term

The licence will expire 31 August 2026.

Conditions of licence

1. The licensee shall adhere 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, with the exception of condition of licence 7, as well as to the conditions set out in the licence for the undertaking.

2. The licensee shall operate the station within the specialty format as defined in *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995, and in *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010.

3. In each broadcast week, the licensee shall broadcast ethnic programming directed towards at least 12 distinct ethnic groups in at least 12 different languages.

4. The licensee shall devote a minimum of 84 hours and 30 minutes of the broadcast week to ethnic programs as defined in the *Radio Regulations, 1986,* as amended from time to time.

Expectation

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

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.