Broadcasting Decision CRTC 2021-140

PDF version

Reference: 2020-396

Ottawa, 26 April 2021

Acadia Broadcasting Limited
Halifax, Nova Scotia

Public record for this application: 2020-0569-4
Public hearing in the National Capital Region
25 February 2021

CKHY-FM and CKHZ-FM Halifax – Acquisition of assets and licence amendments

The Commission **approves** an application by Acadia Broadcasting Limited for authority to acquire the assets of the English-language commercial radio stations CKHY-FM and CKHZ-FM Halifax and to obtain new broadcasting licences to continue the operation of the stations.

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.

The Commission **denies** the applicant's request to delete (or amend) CKHY-FM and CKHZ-FM's respective conditions of licence relating to the broadcast of Canadian musical selections from content category 2 (Popular Music). The Commission **approves** the applicant's request to delete CKHY-FM's condition of licence relating to the broadcast of music from content category 3 (Special Interest Music).

Application

1. 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. The public interest is reflected in the numerous objectives of the Act and of the Canadian broadcasting policy 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.

2. Acadia Broadcasting Limited (Acadia) filed an application to acquire from HFX Broadcasting Inc., a subsidiary of Evanov Communications Inc., (Evanov) the assets of the English-language commercial radio programming undertakings CKHY-FM and CKHZ-FM Halifax, Nova Scotia. Acadia also requested new broadcasting licences to continue the operation of the undertakings. In addition, Acadia requested to delete the undertakings' respective conditions of licence relating to the level of Canadian content it must broadcast, as

well as to delete CKHY-FM's condition of licence relating to the level of content category 3 (Special Interest) music it must broadcast.

3. Acadia is jointly and ultimately controlled by John K. F. Irving through his holding company Black-Tip Investments Limited (50%) and Anne C. I. Oxley through her holding company Rosa Rugosa Investments Limited (50%), both of whom are Canadian, satisfying the *Direction to the CRTC (Ineligibility of Non-Canadians)*, SOR/97-192.

4. The applicant proposed a value of the transaction of $5,120,167 including the purchase price, working capital to be transferred at closing and leases assumed by the purchaser. Acadia requested an exception to the payment of tangible benefits as provided for in Broadcasting Regulatory Policy 2014-459 (the Policy).

5. Following the close of the transaction, Acadia would become the licensee of CKHY-FM and CKHZ-FM.

6. The Commission did not receive any interventions in regard to this application.

Background

7. Halifax Regional Municipality (Halifax) is the largest radio market in Nova Scotia and the 10th largest radio market in Canada. The market comprises eleven commercial radio stations, four Canadian Broadcasting Corporation radio stations, two community radio stations, two religious radio stations and one campus radio station.

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 the transaction is in the public interest;
   - the value of the transaction;
   - tangible benefits; and
   - issuance and amendment of new broadcasting licences.

Public interest

9. 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 the application 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, according to the circumstances specific to the application.

10. To determine whether a proposed transaction is in the public interest, the Commission takes into account a wide set of factors set out in the Act, including the nature of programming and service to the communities involved as well as regional, social, cultural, economic and financial considerations. The Commission must be persuaded that the proposed transaction benefits Canadians and the broadcasting system.

Position of the parties

11. CKHY-FM and CKHZ-FM are the only radio stations that Evanov operates in Atlantic Canada. Evanov stated that the geographic isolation of these stations from its other stations in Quebec, Ontario and Manitoba, as well as the commitments made at the time of licensing, have contributed to the stations' lack of profitability. In addition, Evanov noted that the financial impact of the COVID-19 pandemic required it to redistribute its resources to ensure the continued viability of its other radio stations. In light of these financial challenges, Evanov sought to sell its Halifax stations to an established regional broadcaster.

12. Acadia currently operates eight radio stations in Atlantic Canada.[1] The acquisition of these stations aligns with its strategic goal to grow and diversify in Atlantic Canada. Acadia considers that the Halifax radio market would be a good fit for its progressive, innovative and people-focused community-based approach to broadcasting.

13. Acadia indicated its intention to strengthen the stations' regional news and information coverage by promoting community events, broadcasting public service announcements and encouraging the stations' staff to volunteer within the community. It intends to develop and leverage regional partnerships with local and provincial government officials, and local business leaders and newsmakers to provide a diverse perspective.

14. Acadia will also be in a position to introduce synergies with its existing portfolio and to provide Atlantic-Canada-focused expertise.

Commission's analysis and decision

15. The Commission recognizes that, in the context of the COVID-19 pandemic, the Halifax radio market has seen a decline in revenues. CKHY-FM and CKHZ-FM have experienced declines in revenue more pronounced than that of the Halifax market as a whole. While Acadia's revenues have also decreased in the context of the pandemic, the Commission is of the view that Acadia has proven to be a successful and resilient regional broadcaster and that Acadia is in a position to improve the financial viability of CKHY-FM and CKHZ-FM.

16. The Commission notes Acadia's intention to enhance the local programming on CKHY-FM and CKHZ-FM. The Commission is of the view that these efforts will enable the stations to continue contributing to the diversity of voices in Halifax.

---

[1] Acadia operates stations in Moncton, Saint John and St. Stephen in New Brunswick, and in Bridgewater, Port Hawkesbury and Yarmouth in Nova Scotia.

17. The Commission considers that the expertise that Acadia possesses operating in similar markets, coupled with its regional presence in Atlantic Canada, will enable Acadia to maximize synergies among its stations.

18. In light of the above, the Commission considers that the acquisition of the assets of the CKHY-FM and CKHZ-FM by Acadia would be in the public interest and would meet the objectives set out in section 3(1) of the Act.

Value of the transaction

19. As set out in the Policy, the Commission requires the payment of tangible benefits as part of a change in the effective control of all broadcasting undertakings. The value of the transaction is used to calculate the amount of tangible benefits to be paid. To calculate the value of the transaction, 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 (i.e., buildings, studios and offices) and transmission facilities. The value of leases is calculated over 60 months. The Commission's general practice is to use the value of the working capital at the time that the application is submitted as shown on the most recent financial statements available.

20. In response to a request for information from the Commission, Acadia provided an amended value of the transaction of $5,120,167 including the amount of working capital at the time of the application and the value of the assumed leases calculated over 60 months. Acadia calculated the working capital using financial statements dated 30 September 2020, which were the closest available statements to the date of this application.

21. The Commission notes that Acadia's proposal is in line with the Policy.

22. In light of the above, the Commission determines that the value of the transaction is $5,120,167, as per the calculation in the table below:

Item	Amount
Purchase price	$4,500,000
Addition: working capital	$108,126
Addition: assumed leases	$512,041
Value of the transaction	**$5,120,167**

Tangible benefits package

23. 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.

24. In the absence of a competitive licensing process for transfers of ownership or control of broadcasting undertakings, 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.

25. The Policy provides for 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.

26. 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.

Acadia's position

27. Acadia did not include a tangible benefits package in its application. Given CKHY-FM and CKHZ-FM's past financial performance and the COVID-19 pandemic's financial impact on radio markets, it is seeking an exception to the requirement to pay tangible benefits as set out in the Policy.

28. With regard to the first criterion for an exception to the payment of tangible benefits, Acadia noted that the stations are not in their first licence term.

29. With regard to the second criterion, Acadia noted that the two stations have been unprofitable over a period equivalent to a full licence term (seven broadcast years). Acadia acknowledged that the stations reported a slight positive profit before interest and taxes for the 2017 and 2018 broadcast years. However, it submitted that if a 12% overhead allocation had been taken into account, the stations would have reported financial losses in each of the past seven broadcast years. Acadia added that its projects future financial losses for the stations over a number of years.

30. With regard to the third criterion, Acadia stated that, taking into account the devastating financial impact of the pandemic on radio markets, an exception would be consistent with the intent of the Policy. Acadia specified that the public interest is served when failing stations are maintained and new operators are given the opportunity to improve them (e.g., by enhancing local programming) and maximize their investments.

Commission's analysis and decision

31. The Commission finds that Acadia's application meets the first criterion for an exception to the Policy, since CKHY-FM and CKHZ-FM are not in their first licence terms.

32. With regard to the second criterion, the Commission acknowledges Acadia's statement that certain expenses were excluded from the annual returns submitted to the Commission. However, the Commission will follow its standard practice of considering only data submitted by licensees as part of annual returns in assessing whether the stations suffered significant financial losses. Accordingly, the Commission finds that Acadia's application does not meet the second criterion for an exception to the Policy.

33. With regard to the third criterion, the Commission recognizes the financial difficulties of the stations. However, the Commission considers that Acadia would be acquiring valuable assets that would enable it to enter the largest radio market in Nova Scotia. The Commission also notes that the stations would benefit from Acadia's regional expertise and synergies with its other Atlantic Canada radio stations. Accordingly, the Commission finds that Acadia's application does not meet the third criterion for an exception to the Policy.

34. The Commission acknowledges the economic impact of the COVID-19 pandemic on radio markets. 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 ensure that eligible third-party Canadian content development recipients receiving tangible benefits can also continue to contribute to the broadcasting system.

35. In light of the above, the Commission **denies** Acadia's request for an exception to the payment of tangible benefits as set out in the Policy and **directs** Acadia to pay tangible benefits amounting to $307,210, which is 6% of the value of the transaction, over seven consecutive broadcast years.

Allocation of tangible benefits

36. 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.

37. In response to a letter from the Commission, Acadia proposed two partial relief scenarios with regard to the payment of tangible benefits. Acadia proposed that only half of the value of the transaction be used to calculate the amount of tangible benefits to be paid. Accordingly, it proposed a tangible benefits package of $153,605 (6% of half the value of the transaction of $5,120,167). In addition:

    i. Acadia proposed to defer the payments to begin in the fourth year after the transaction (in the 2023-2024 broadcast year).

    ii. Acadia proposed to make only the contribution to the CRFC worth 0.5% of the value of the transaction.

38. With regard to Acadia's proposal to use half the value of the transaction to calculate the amount of tangible benefits to be paid, the Commission notes that the Policy does not allow for such an approach and that it would be contrary to the Commission's longstanding practice of considering only the value of the transaction as a whole even when the assets of multiple stations are involved. The Commission notes that assessing the stations' financial situations independently is difficult, especially in cases like this one where expenses are shared between stations, since this can result in asymmetric allocations in annual returns. Further, Acadia indicated in response to a letter from the Commission that the purchase price is for both stations to be acquired as one entity and not to be sold separately.

39. With regard to Acadia's first partial relief proposal, the Commission is of the view that a delay in payment until the third broadcast year would significantly delay the disbursement of tangible benefits to eligible recipients and in turn hamper their ability to contribute to the broadcasting system.

40. With regard to Acadia's second partial relief proposal, the Commission considers that this unusually large relief would unfairly affect the other eligible recipients of tangible benefits and hamper their ability to contribute to the broadcasting system.

41. The Commission recognizes the impact of the COVID-19 pandemic on the radio industry and the challenges broadcasters are facing as a result. Accordingly, the Commission is of the view that some relief should be provided.

42. In light of the above, the Commission, as an exception to its general approach relating to the timing of tangible benefits payments, 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 Acadia 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	$12,540	$6,270	$3,135	$2,090	$1,045
2021-2022	$12,540	$6,270	$3,135	$2,090	$1,045
2022-2023	$56,426	$28,213	$14,107	$9,404	$4,702
2023-2024	$56,426	$28,213	$14,107	$9,404	$4,702
2024-2025	$56,426	$28,213	$14,107	$9,404	$4,702
2025-2026	$56,426	$28,213	$14,107	$9,404	$4,702
2026-2027	$56,426	$28,213	$14,107	$9,404	$4,702

43. The Commission is of the view that this modified payment schedule will provide some relief to Acadia during the uncertainty of the COVID-19 pandemic, while maintaining yearly payments.

Issuance and amendment of broadcasting licences

44. As set out in Broadcasting Information Bulletin 2008-8-2, a transaction involving the acquisition of the assets of an undertaking requires the issuance of a new broadcasting licence for the undertaking since broadcasting licences are not transferable.

45. The Commission has the authority, pursuant to section 9(1) of the Act, to issue 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, as well as to amend those conditions on application of the licensee.

Request to modify conditions of licence

46. The Commission evaluates requests for licence amendments on a case-by-case basis. In general, the Commission expects applicants to demonstrate a compelling need and to provide any other relevant evidence that would support the proposal. Licensees that, as the result of a competitive licensing process, have a condition of licence setting out requirements different from those set out in the *Radio Regulations, 1986* (the Regulations) are generally expected to maintain their original conditions of licence for at least the first licence term. The Commission also expects licensees of radio stations to be in compliance with any condition of licence they are seeking to amend or delete.

Broadcast of content category 2 (Popular Music) Canadian musical selections

47. Acadia proposed to delete CKHY-FM and CKHZ-FM's respective conditions of licence 2 relating to the broadcast of content category 2 (Popular Music) Canadian musical selections. Should this request be approved, the stations would revert to the requirements set out in sections 2.2(8) and 2.2(9) of the Regulations, which require stations to devote, in each broadcast week and between 6 a.m. and 6 p.m. in any period beginning on a Monday and ending on the Friday of that week, at least 35% of their musical selections from content category 2 to Canadian selections.

48. In the event that the Commission did not approve this request, Acadia submitted an alternative proposal of replacing CKHZ-FM's condition of licence 2 with CKHY-FM's condition of licence 2 so that the two stations have the same requirement.

49. CKHY-FM's condition of licence 2 set out in Appendix 4 to Broadcasting Decision 2016-286 states:

> 2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in section 2.2(8) of the *Radio Regulations, 1986* (the Regulations), as amended from time to time, in any broadcast week, devote, in that broadcast week, a minimum of 40% of its musical selections from content category 2 (Popular Music) to Canadian selections and schedule them in a reasonable manner throughout each broadcast day.

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

50. CKHZ-FM’s condition of licence 2 set out in the appendix to Broadcasting Decision 2019-235 states:

2. 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), the licensee shall devote to Canadian selections broadcast in their entirety:

a. at least 40% of its musical selections from content category 2 (Popular Music) to Canadian selections in each broadcast week; and

b. at least 40% of its musical selections from content category 2 between 6 a.m. and 6 p.m. in any period beginning on Monday of a week and ending on Friday.

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

Issues

51. In its analysis of this request, the Commission considers that it must address the following:

- whether the licensee is in compliance with the conditions of licence it is seeking to amend;
- whether the applicant has demonstrated a compelling need for the requested change;
- the appropriateness of changing a condition of licence set out as part of a competitive licensing process; and
- the applicant’s alternative proposal.

Non-compliance

52. Section 10(1)(a) of the Act declares that the Commission may, in furtherance of its objects, make regulations respecting the proportion of time that shall be devoted to the broadcasting of Canadian programs. Section 3(1)(e) of the Act declares that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming. Section 3(1)(s)(i) of the Act declares that private networks and programming undertakings should, to an extent consistent with the financial resources available to them, contribute significantly to the creation and presentation of Canadian programming.

53. Pursuant to the authority granted by section 10(1)(a) of the Act, and consistent with the provisions set out in sections 3(1)(e) and 3(1)(s)(i), the Commission made sections 2.2(8) and 2.2(9) of the Regulations, which require licensees of commercial radio stations to devote, in each broadcast week and between 6 a.m. and 6 p.m. in any period beginning on a Monday

and ending on the Friday of that week, at least 35% of their musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety.

54. Some licensees have conditions of licence that set out different requirements for Canadian content, as an exception to the Regulations. CKHY-FM and CKHZ-FM both have such requirements.

55. A review of the stations' compliance revealed that CKHY-FM is in apparent non-compliance with its condition of licence 2.

56. A monitoring evaluation of CKHY-FM's programming for the week of 13 to 20 September 2020 showed that its Canadian content level was 33%, which is 7% less than the requirement set out in its condition of licence 2.

57. Acadia provided Evanov's explanation for the lower level of Canadian content: a scheduling glitch resulted in 100% of the content category 3 (Special Interest) musical selections aired during that broadcast week being Canadian selections. Evanov added that when this overage is combined with the level of content category 2 Canadian selections broadcast, the total percentage of Canadian selections aired that broadcast week was 41%.

58. Evanov indicated that it took steps to ensure that this would not reoccur and designated a program manager to perform additional checks to ensure compliance. Acadia stated that it would replace the stations' systems with its own proven monitoring best practices and software. Acadia also stated that Evanov, to proactively address the matter, paid an additional $728 CCD contribution[2] to FACTOR to compensate for the harm caused to the Canadian broadcasting system.

59. In light of the above, the Commission finds CKHY-FM in non-compliance with its condition of licence 2 set out in Appendix 4 to Broadcasting Decision 2016-286.

Regulatory measures

60. 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 number, recurrence and seriousness of the instance of 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.

61. In regard to non-compliance with requirements relating to music programming, the Commission may impose, as a remedial measure to the harm caused to the broadcasting system, a condition of licence requiring the licensee to make an additional CCD contribution.

---

[2] To determine the amount of an additional CCD contribution to address the harm caused to the Canadian broadcasting system by an instance of non-compliance, the Commission uses an established formula that takes into account the station's annual revenue and the percentage of the shortfall. The amount of $728 and the possibility that it would be imposed were outlined in a letter to the applicant.

62. The Commission notes Acadia's willingness to ensure the station's compliance with its regulatory requirements and conditions of licence. Given the voluntary payment to FACTOR made by Evanov, the Commission considers that no additional measures should be imposed to address this instance of non-compliance.

63. In Broadcasting Decision 2016-286, the Commission found CKHY-FM in non-compliance with its condition of licence relating to over-and-above CCD contributions. Therefore, this is the second consecutive licence term in which the licensee has been found in non-compliance.

Demonstration of a compelling need

64. Acadia submitted that the 40% Canadian content level requirement places CKHY-FM and CKHZ-FM at a competitive disadvantage. It indicated that the stations are among the lowest rated commercial radio stations in Halifax. Acadia acknowledged that discerning the precise impact of this requirement would be impossible. However, Acadia listed other Canadian stations with a 40% Canadian content requirement that have a low ranking in their respective markets.

65. Acadia submitted that the 40% Canadian content level requirement and the resulting low ratings contribute to the stations' unprofitability. Acadia argued that, without the 40% requirement, it would be able to address the negative financial impact of the COVID-19 pandemic and make the stations profitable sooner, setting them up for future success.

66. Acadia stated that ensuring the viability of the stations and thereby enhancing the competitive landscape in Halifax is in the public interest. Acadia reiterated its intention to contribute to the diversity of voices in Halifax, ensuring that the stations continue to provide valued service in the market.

67. The Commission examined a random sample of 12 radio stations from a range of markets and ownership groups that have the single non-standard requirement to broadcast 40% Canadian content for content category 2 (Popular Music). The Commission found that the average profit before interest and taxes of the sample exceeded that of the average commercial FM radio station in each of the years from 2015 to 2019. The Commission also notes that CKHZ-FM reported strong year over year growth from 2015 to 2017, in a highly competitive market.

68. In light of the above, the Commission is of the view that the applicant submitted insufficient evidence to demonstrate that a requirement to broadcast 40% Canadian content for content category 2 music in lieu of the standard 35% requirement would preclude financial viability.

Appropriateness of reducing Canadian content levels

69. Acadia acknowledged that the licensee's commitment to a non-standard requirement to broadcast 40% Canadian content for content category 2 (Popular Music) may have factored into the Commission's decision to award licences for the two stations as part of competitive hearings. However, Acadia indicated that the stations are not in their first licence terms. Therefore, the commitment should not factor into the decision to award licences to Acadia as the new owner.

70. The Commission notes that the level of Canadian content to be broadcast is typically a key factor in its assessment of competitive applications for broadcasting licences to operate new radio stations. The Commission has not generally been inclined to delete conditions of licence relating to the broadcast of content category 2 Canadian musical selections even after the first licence term has elapsed. The Commission notes that while no other stations in Halifax have a similar requirement, a 40% level of content category 2 Canadian musical selections is not an uncommon requirement for radio stations across Canada.

71. The commitment to exceed the regulatory minimum of 35% content category 2 Canadian musical selections was an important factor in the Commission's decision to grant broadcasting licences for CKHY-FM and CKHZ-FM. Even though the stations are not in their first licence term, the Commission considers that the commitments remain relevant and serve to maintain programming diversity in the Halifax market.

72. The Commission has recognized that certain music genres have limited Canadian content and provided flexibility in those cases. In this case, neither station operates in a format that is known to have limited Canadian content.

Acadia's alternative proposal

73. In the event that the Commission did not approve Acadia's request to delete the stations' respective conditions of licence relating to the level of content category 2 Canadian musical selections, Acadia requested that both stations have the same wording for the requirement—specifically, both stations would have the wording that CKHY-FM currently has.

74. The Commission notes that this proposal would result in the removal of CKHZ-FM's additional requirement of maintaining the 40% level of Canadian content from 6 a.m. to 6 p.m. Monday to Friday. The Commission is of the view that its conclusions above regarding the proposal to delete the stations' respective conditions of licence 2 also apply to this proposal to amend CKHZ-FM's condition of licence 2. The Commission considers that, other than harmonizing the requirements of the two stations, the applicant did not provide additional rationale for this proposal.

Commission's decision

75. Radio stations play an important role in showcasing the work of Canadian artists. The stations contribute to the fulfilment of the objective set out in section 3(1)(d)(ii) of the Act, which provides that the Canadian broadcasting system should encourage the development of Canadian expression by displaying Canadian talent in entertainment programming.

76. The Commission notes that, in Broadcasting Decision 2013-144, it denied the licensee's request to decrease from 40% to 35% the level of Canadian musical selections from content category 2 (Popular Music) that CKHZ-FM is required to broadcast between 6 a.m. and 6 p.m. Monday to Friday. In that decision, the Commission stated that the licensee's commitment to exceed the regulatory minimum for Canadian content was an important factor in awarding the licence for CKHZ-FM as part of a competitive licensing process. The Commission found that the licensee did not provide any evidence that its 40% Canadian content level places CKHZ-FM at a competitive disadvantage in Halifax.

77. The Commission remains of the view that these circumstances do not warrant a deviation from its general practice of maintaining conditions of licence that impose content category 2 Canadian musical selection requirements that exceed the regulatory minimum.

78. The Commission notes that, as outlined above, CKHY-FM is in non-compliance with its condition of licence 2. The Commission expects licensees of radio stations to be in compliance with any condition of licence they are seeking to amend or delete.

79. In light of the above, the Commission **denies** Acadia's request to delete (or amend) CKHY-FM and CKHZ-FM's respective conditions of licence relating to the level of content category 2 (Popular Music) Canadian musical selections.

Broadcast of content category 3 (Special Interest Music) musical selections – CKHY-FM

80. Acadia proposed to delete CKHY-FM's condition of licence 3 set out in Appendix 4 to Broadcasting Decision 2016-286, which states, "The licensee shall, in any broadcast week, devote a minimum of 10% of all musical selections broadcast to musical selections drawn from content category 3 (Special Interest Music)." Acadia specified that it would terminate the asset purchase agreement if this request is not approved.

81. Acadia stated that CKHY-FM has been operating under this condition of licence for two licence terms. Acadia submitted that this condition of licence has a negative effect on revenue and listenership and that it is an administrative burden.

Commission's decision

82. The Commission recognizes that CKHY-FM is not in its first licence term. The station was originally licensed as a mainstream commercial radio station that offers mostly musical selections from content category 2, and it is not operating under a specialty format. Consequently, the Commission considers that approval of this proposed amendment would not compromise the integrity of the Commission's licensing process.

83. The Commission notes that the deletion of this condition of licence would decrease the diversity of programming in the Halifax market, since CKHY-FM is the only commercial station with such a requirement in Halifax. However, CKHY-FM broadcasts mostly content category 2 (Popular Music). Consequently, the Commission considers that the impact of lifting the content category 3 requirement on the diversity of programming would be minimal.

84. The Commission recognizes that, from 2015 to 2019, CKHZ-FM generated significantly more advertising revenue than CKHY-FM, when the only differences between the two stations are format and this content category 3 requirement. Moreover, CKHY-FM reported a decrease in revenues each year over this time period. Further, other radio stations that had similar content category 3 requirements saw increases in revenue after the condition of licence was lifted by the Commission. Consequently, the Commission considers that there is sufficient evidence to justify the proposed licence amendment.

85. In light of the above, the Commission **approves** the applicant's request to delete CKHY-FM's condition of licence relating to the broadcast of music from content category 3 (Special Interest Music).

New broadcasting licences

86. The current broadcasting licences for CKHY-FM and CKHZ-FM will expire 31 August 2023 and 2026, respectively. The Commission considers that the new broadcasting licences for the two undertakings should expire 31 August 2026, which would harmonize the expiry date of the licences for the two radio stations.

Conclusion

87. In light of all of the above, the Commission **approves** the application by Acadia Broadcasting Limited to acquire from HFX Broadcasting Inc., a subsidiary of Evanov Communications Inc., the assets of the English-language commercial radio stations CKHY-FM and CKHZ-FM Halifax, Nova Scotia, and for new broadcasting licences to continue the operation of the undertakings.

88. The Commission **denies** Acadia's request for an exception to the payment of tangible benefits as set out in Broadcasting Regulatory Policy 2014-459. The Commission **directs** Acadia to pay tangible benefits amounting to $307,210 over seven consecutive broadcast years, allocated in accordance with the payment schedule set out in paragraph 42 of this decision, and to submit acceptable proofs of payment.

89. The Commission **denies** the applicant's request to delete (or amend) CKHY-FM and CKHZ-FM's respective conditions of licence relating to the broadcast of Canadian musical selections from content category 2 (Popular Music). The Commission **approves** the applicant's request to delete CKHY-FM's condition of licence relating to the broadcast of music from content category 3 (Special Interest Music).

90. Acadia shall notify the Commission of the close of the transaction, and upon surrender of the current licences held by HFX Broadcasting Inc., the Commission will issue new broadcasting licences to Acadia. The new licences will expire on 31 August 2026. The terms and **conditions of licence** are set out in the appendix to this decision.

Reminders

91. Shortfalls in the broadcast of Canadian musical selections cause harm to the Canadian broadcasting system because they deprive certain classes of artists not receiving airplay. The royalties that licensees avoid paying to those classes of artists, which make up a share of licensees' revenues, represent a means of approximating the impact of the harm. Further, Canadian listeners are deprived of the benefits of Canadian music.

Force and effect of broadcasting licences

92. Pursuant to section 22 of the Act, the broadcasting licences issued in this decision will cease to have any force or effect if the broadcasting certificates issued by the Department of Industry lapse.

Secretary General

Related documents

- *CKHZ-FM Halifax – Licence renewal*, Broadcasting Decision CRTC 2019-235, 3 July 2019

- *Various commercial radio stations – Licence renewals*, Broadcasting Decision CRTC 2016-286, 22 July 2016

- *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

- *A Guide to the CRTC application process for changes in effective control and certain transfers of shares of broadcasting undertakings as well as the acquisition of assets of broadcasting undertakings – Change in the manner of issuing related information bulletins*, Broadcasting Information Bulletin CRTC 2008-8-2, 6 December 2013

- *CKHZ-FM Halifax – Licence renewal*, Broadcasting Decision CRTC 2013-144, 21 March 2013

This decision is to be appended to each of the licences.

Appendix to Broadcasting Decision CRTC 2021-140

Terms, conditions of licence and expectation for the English-language commercial radio programming undertakings CKHY-FM and CKHZ-FM Halifax, Nova Scotia

Terms

The licences will expire 31 August 2026.

Conditions of licence applicable to both stations

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, as well as to the conditions set out in the licence for the undertaking.

Condition of licence applicable to CKHY-FM Halifax

2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in section 2.2(8) of the *Radio Regulations, 1986* (the Regulations), as amended from time to time, in any broadcast week, devote, in that broadcast week, a minimum of 40% of its musical selections from content category 2 (Popular Music) to Canadian selections and schedule them in a reasonable manner throughout each broadcast day.

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

Condition of licence applicable to CKHZ-FM Halifax

3. 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), the licensee shall devote to Canadian selections broadcast in their entirety:

   a. at least 40% of its musical selections from content category 2 (Popular Music) to Canadian selections in each broadcast week; and

   b. at least 40% of its musical selections from content category 2 between 6 a.m. and 6 p.m. in any period beginning on Monday of a week and ending on Friday.

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

Expectation

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