



Broadcasting Decision CRTC 2021-168

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Reference: 2021-36

Ottawa, 11 May 2021

Mohawk Multi Media
Kanesatake/Oka, Quebec

Public record for this application: 2020-0751-7
Public hearing in the National Capital Region
30 March 2021

CKHQ-FM Kanesatake/Oka – Acquisition of assets

The Commission **approves** an application by Mohawk Multi Media for authority to acquire the assets of the low-power English- and Mohawk-language Indigenous radio station CKHQ-FM Kanesatake/Oka and to obtain a new broadcasting licence to continue the operation of the station.

Application

1. Pursuant to section 5(1) and 5(2)(b) 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, in a flexible manner that takes into account regional needs and concerns. 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. Mohawk Multi Media (MMM) filed an application to acquire the assets of the low-power English- and Mohawk-language Indigenous (Type B Native)¹ radio programming undertaking CKHQ-FM Kanesatake/Oka, Quebec, from CKHQ United Voices Radio (United Voices). MMM also requested a new broadcasting licence to continue the operation of the undertaking under the same terms and conditions of licence as those in effect under the current licence.
3. MMM is a not-for-profit corporation controlled by its board of directors.
4. United Voices donated the assets of CKHQ-FM to MMM and, in a letter dated 17 September 2020, submitted that the assets are of minimal value and that, therefore, a formal purchase agreement was not required.

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

5. Following the acquisition of the assets, MMM would become the licensee of CKHQ-FM.
6. The Commission did not receive any interventions in regard to this application.
7. As part of this proceeding, the Commission also considered MMM's application 2020-0420-9 to change CKHQ-FM's status from a low-power unprotected service to a regular power FM service. The Commission's determinations on that application are to be published separately.

Background

8. In Broadcasting Decision 2014-324, the Commission approved an application by James Nelson, on behalf of a not-for-profit corporation to be incorporated (now United Voices), for a broadcasting licence to operate the station as a low-power English- and Mohawk-language Indigenous radio station.
9. In July 2017, a flood destroyed the station's studio and most of its transmitting equipment. As a result, CKHQ-FM went off air. MMM indicated that, at the time, United Voices faced a number of hurdles, including financial difficulties and a lack of operational experience, that prevented it from relaunching the station.
10. In Broadcasting Decision 2019-112, the Commission administratively renewed CKHQ-FM's broadcasting licence until 31 August 2022.
11. With the support of the current licensee and the Mohawk Council, MMM undertook to establish a temporary broadcasting site to relaunch the station under amended low-power technical parameters similar to those approved in Broadcasting Decision 2014-324. The station resumed broadcasting on 2 April 2020.

Issues

12. 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 MMM is eligible to hold a broadcasting licence to operate an Indigenous radio station;
 - whether the transaction is in the public interest;
 - CKHQ-FM's compliance with its regulatory requirements.

Eligibility of MMM

Canadian ownership and control

13. Pursuant to *Direction to the CRTC (Ineligibility of Non-Canadians)* (the Direction), issued by the Governor in Council under section 26(1) of the Act, no broadcasting licence may be issued, and no amendment or renewal thereof may be granted, to an applicant that is a "non-Canadian." A "non-Canadian" is a person or entity that is not a "Canadian."

14. MMM is Canadian owned and controlled. Its board of directors is composed of five Canadian Mohawk individuals, including its Chief Executive Officer (CEO) Sylvain Gaspé.
15. In light of the above, the Commission is satisfied that following the proposed transaction, CKHQ-FM will continue to be owned and controlled by Canadians as defined in the Direction.

Operating an Indigenous undertaking

16. According to the Public Notice 1990-89 (the Policy), an Indigenous undertaking must be owned and controlled by a not-for-profit organization whose structure provides for board membership by the Indigenous population of the region served.
17. MMM is a not-for profit corporation incorporated under the *Canada Not-for-profit Corporations Act*. MMM's bylaws indicate that its board membership is open to the Mohawk population of the Kanesatake region served. The current members of MMM's board of directors, including its CEO Sylvain Gaspé, are all members of the Indigenous (Mohawk) community that CKHQ-FM serves.
18. In light of the above, the Commission finds that MMM is eligible to hold a broadcasting licence to operate the Indigenous undertaking CKHQ-FM.

Public interest

19. 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 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. The Commission must be persuaded that the proposed transaction benefits Canadians and the broadcasting system.
20. 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 broadcasting policy set out in section 3(1) of the Act describes a broadcasting system that contributes to the creation and presentation of high-standard Canadian programming that reflects the varied demographics of the country and ensures that a diversity of voices is available to audiences. It also stipulates that the broadcasting system should reflect the special place of Indigenous people in society.

Position of the parties

21. MMM indicated that its CEO Sylvain Gaspé gained the support of the community to relaunch the station. Sylvain Gaspé has experience in the broadcasting sector: he worked for 24 years in technical radio operations with the Canadian Broadcasting Corporation in Montréal.

22. In its letter dated 17 September 2020, United Voices indicated that it fully supports MMM's application to operate CKHQ-FM so that it can offer a sustainable radio service to the Kanesatake community. MMM filed with this application a resolution supported by all the Chiefs of the Mohawk Council of Kanesatake approving the relaunching project.
23. Further, MMM stated that it understands its regulatory obligations and conditions of licence relating to CKHQ-FM and will ensure to operate in compliance with these.

Commission's analysis and decision

24. According to the Policy, an Indigenous undertaking serves and reflects the interests and needs specific to the Indigenous audience it is licensed to serve. It has a distinct role in fostering the development of Indigenous cultures and, where possible, the preservation of ancestral languages.
25. The Commission recognizes that, as the sole station dedicated to the Kanesatake community, CKHQ-FM plays an important role in the community and that the community was deprived of CKHQ-FM's signal for nearly three years before MMM relaunched it. The Commission also notes that it did not receive any interventions from other parties that would be interested in operating CKHQ-FM.
26. As indicated in section 3 of the bylaws filed with the application, MMM's mission statement is to promote the Mohawk identity, including language, art, history, values and traditions, as well as to share these elements with both their community and neighbouring communities through original multimedia content. The Commission is of the view that, through CKHQ-FM's programming and the community's access to its board of directors, MMM is specifically oriented to the Indigenous population and reflects the interests and needs specific to the Indigenous audience it proposes to serve.
27. The Commission is of the view that MMM is in a position to involve the community in the station's operation and to consolidate its funding activities in order to operate the station in a more sustainable manner.
28. The Commission also recognizes MMM's capacity and willingness to bring CKHQ-FM into compliance with its regulatory obligations given that United Voices is in apparent non-compliance with some of its regulatory obligations (as outlined below).
29. In light of the above, the Commission considers that the acquisition of the assets of the CKHQ-FM by MMM is in the public interest and meets the objectives set out in section 3(1) of the Act.

Non-compliance

30. Licensees of radio stations must comply at all times with the requirements set out in the Act, the *Radio Regulations, 1986* (the Regulations) and their conditions of licence. These requirements ensure that licensees provide high quality service to their communities consistent with the objectives of the Act.

31. 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 assessed 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, the arguments made by the licensee and the actions taken to rectify the situation are also considered.
32. In Broadcasting Notice of Proceeding 2019-217, the Commission announced a process to modernize the existing regulatory framework so that the Canadian broadcasting system can adequately support the needs of Indigenous Peoples. As part of this process the Commission is examining its overall approach to the regulation and supervision of Indigenous radio stations in terms of regulatory obligations and non-compliance. The Commission also determined in Broadcasting Decision 2019-112 that the broadcasting licences held by Indigenous radio broadcasting undertakings should be assessed under the revised policy framework. Therefore, it administratively renewed the stations' licences, including CKHQ-FM's until 31 August 2022.
33. So that it can fully address any instances of non-compliance at CKHQ-FM's next licence renewal, the Commission proposed to impose a condition of licence that would hold MMM responsible for any past non-compliance related to CKHQ-FM. In response, MMM agreed to the imposition of a condition of licence that would hold MMM responsible for instances of non-compliance relating to the filing of annual returns and the implementation of the National Public Alerting System (NPAS) for CKHQ-FM as of 2 April 2020, when MMM officially assumed control of CKHQ-FM.

Filing of annual returns

34. Section 10(1)(i) of the Act authorizes the Commission, in furtherance of its objects, to make regulations requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify.
35. Pursuant to this authority, the Commission made section 9(2) of the Regulations, which requires licensees to file an annual return, including financial statements, by no later than 30 November of a given year for the broadcast year ending the previous 31 August. The specific filing requirements, including the requirement to file financial statements, are set out in Broadcasting Information Bulletin 2011-795.
36. According to Commission records, the licensee has not filed any annual returns over its license term (since 2014).
37. MMM committed to file CKHQ-FM's annual returns for the 2019-2020 and 2020-2021 broadcast years, covering the period from 2 April 2020 to 31 August 2021. A **condition of licence** to that effect is set out in the appendix to this decision.

Implementation of a National Public Alerting System

38. Section 10(1) of the Act authorizes the Commission to make regulations furthering its objects regarding the broadcasting of programs. In Broadcasting Regulatory Policy 2014-444, the

Commission reiterated that the broadcasting system has a vital role to play in the provision of emergency alert messages to Canadians and that the duty to inform the public of imminent perils is at the core of the public service obligations of all broadcasters.

39. The provision of emergency alert messages is achieved through Canada's NPAS. In Broadcasting Regulatory Policy 2014-444, the Commission announced that it was requiring broadcasters to fully participate in the NPAS and that by 31 March 2015, all broadcasters in Canada, with certain exceptions,² would be required to alert Canadians to imminent threats to life.
40. In this regard and pursuant to the authority granted by section 10(1) of the Act, the Commission made section 16(2) of the Regulations, which specifies that except as otherwise provided under a condition of its licence, a licensee shall implement on all stations that it is licensed to operate, by no later than 31 March 2015, a public alerting system that broadcasts without delay, on a given station, any audio alert that it receives from the National Alert Aggregation and Dissemination System that
 - (a) announces an imminent or unfolding danger to life; and
 - (b) is designated by the applicable issuing authority for immediate broadcast in all or part of the area within the station's A.M. 5 mV/m contour, F.M. 0.5 mV/m contour or digital service area, as the case may be.
41. According to Commission records, the licensee did not implement the NPAS by the 31 March 2016 deadline.
42. MMM committed to purchase, install and maintain the NPAS. A **condition of licence** requiring MMM to implement the NPAS within 90 days of the date of this decision is set out in the appendix to this decision.

Prior approval with respect to changes in effective control

43. Pursuant to the authority granted by section 10(1) of the Act, the Commission made section 10.1 of the Regulations, which specifies that, except as otherwise provided pursuant to a condition of its licence, a licensee shall own and operate its transmitter, and section 11(4) of the Regulations, which specifies that, except as otherwise provided pursuant to a condition of its licence, the licensee must obtain the prior approval of the Commission 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.
44. When MMM began operating CKHQ-FM on 2 April 2020, effective control of CKHQ-FM was transferred from United Voices to MMM without prior approval from the Commission.

² For campus, community and Indigenous radio stations and television broadcasters, as well as radiocommunication distribution undertakings, the deadline to implement the NPAS was 31 March 2016.

Accordingly, the licensee is in apparent non-compliance with sections 10.1 and 11(4) of the Regulations.

45. MMM stated that it received support from the licensee and the Mohawk Council of Kanasatake, as well as approval from Innovation Science and Economic Development Canada to relaunch the station as soon as possible, because this would be in the best interest of the Kanasatake community. MMM confirmed its understanding of sections 10.1 and 11(4) of the Regulations and confirmed that it would comply with them as the licensee of CKHQ-FM.
46. The Commission understands the importance of continued service for the Kanasatake community. However, the Commission finds the licensee in non-compliance with sections 10.1 and 11(4) of the Regulations.

Conclusion

47. In light of all of the above, the Commission **approves** the application by Mohawk Multi Media for authority to acquire the assets of the low-power English- and Mohawk-language Indigenous radio programming undertaking CKHQ-FM Kanasatake/Oka, Quebec, and to obtain a new broadcasting licence to continue the operation of the station.
48. Upon surrender of the current licence, the Commission will issue a new broadcasting licence to MMM. The new licence will expire 31 August 2022, the same expiry as the current licence. The terms and **conditions of licence** for the undertaking are set out in the appendix to this decision.
49. The Commission will assess MMM's overall compliance with its regulatory obligations and conditions of licence at CKHQ-FM's next licence renewal. MMM will be held responsible for any non-compliance relating to the filing of annual returns and the implementation of the NPAS that may have occurred since 2 April 2020. **Conditions of licence** to this effect are set out in the appendix to this decision.

Reminders

50. The licensee must comply at all times with the requirements set out in the Act, the Regulations and its conditions of licence.
51. Pursuant to sections 10.1 and 11(4) of the Regulations respectively, a licensee must own and operate its transmitter and must seek Commission's approval prior to effecting a change of ownership and control of any licensed broadcasting undertaking.
52. Licensees are responsible for filing complete annual returns on time, including the financial statements. In addition, as set out in Broadcasting Information Bulletin 2011-795, it is the licensees' responsibility to ensure that all appropriate forms and documentation are included with their annual returns and to contact the Commission if further clarification is required.

53. The full participation of the broadcasting industry is important for the NPAS to be effective in safeguarding and warning Canadians. The Commission holds that compliance is mandatory. Therefore, timely compliance by stations will be closely monitored.
54. Pursuant to section 22 of the Act, the broadcasting licence issued in this decision will cease to have any force or effect if the broadcasting certificate issued by the Department of Industry lapses.

Secretary General

Related documents

- *Co-development of a new Indigenous Broadcasting Policy*, Broadcasting Notice of Proceeding CRTC 2019-217, 20 June 2019
- *Various Indigenous radio programming undertakings – Administrative renewals of licences expiring 31 August 2019, 2020 and 2021*, Broadcasting Decision CRTC 2019-112, 24 April 2019
- *Update on the Commission’s approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 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 Broadcast Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014
- *Low-power Type B Native FM radio station in Kanasatake*, Broadcasting Decision CRTC 2014-324, 17 June 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 2021-168

Terms, conditions of licence and expectation for the low-power, English- and Mohawk-language Indigenous (Type B Native) FM radio programming undertaking CKHQ-FM Kanasatake/Oka, Quebec

Terms

The licence will expire 31 August 2022.

The station will operate at 101.7 MHz (channel 269LP) with an effective radiated power of 30 watts and an effective height of the antenna above average terrain of 30 metres.

The Department of Industry's *BPR-3: Application Procedures and Rules for FM Broadcasting Undertakings* specifies that a low-power FM radio station is considered a secondary assignment operating on an unprotected channel. Should an FM station or transmitter with protected status be granted a frequency incompatible with that used by the low-power station considered in this decision, the applicant may need to cease the operation of that low-power station or file an application to change its frequency and/or technical parameters.

Conditions of licence

1. The licensee shall devote, in each broadcast week, not less than 35% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety.

For the purposes of this condition of licence, the terms "broadcast week," "Canadian selection," "content category" and "musical selection" shall have the same meanings as those set out in the *Radio Regulations, 1986*.

2. If the licensee originates 42 or more hours of programming in any broadcast week, the licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission, and to the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.
3. Mohawk Multi Media shall be responsible for any non-compliance by CKHQ United Voices Radio in regard to its regulatory obligations relating to the filing of annual returns and implementation of the National Public Alerting System from 2 April 2020 until 11 May 2021, if any such non-compliance is identified during the next licence renewal.
4. The licensee shall file with the Commission its annual returns for the 2019-2020 (for the period of 2 April to 31 August 2020) broadcast year by no later than 9 August 2021.
5. To comply with sections 16(2) and 16(3) of the *Radio Regulations, 1986* and *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,

the licensee shall implement the National Public Alerting System (NPAS) by no later than **9 August 2021**. As part of this requirement:

- The licensee must file with the Commission a letter attesting to the implementation date of its NPAS within 14 days after the installation. In this letter, the licensee must confirm whether maintenance, testing and updating procedures have been adopted for its automated emergency alert message distribution equipment.
- In addition, the licensee must file with the Commission the results of its first NPAS tests, as scheduled by the relevant alerting authorities, within two weeks after the occurrence of such system tests.

Expectation

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