



Broadcasting Decision CRTC 2022-133

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Reference: 2022-10

Ottawa, 19 May 2022

FAB Broadcasting Corp.
Listowel, Ontario

Public record: 2021-0439-7

*Public hearing in the National Capital Region
31 March 2022*

CHLP-FM Listowel – Acquisition of assets (corporate reorganization)

Summary

The Commission **approves** an application by FAB Broadcasting Corp. for authorization to acquire from Five Amigos Broadcasting Inc., as part of a corporate reorganization, the assets of the English-language commercial radio station CHLP-FM Listowel, Ontario.

Application

1. FAB Broadcasting Corp. (FAB) filed an application for authorization to acquire from Five Amigos Broadcasting Inc. (Five Amigos), as part of a corporate reorganization, the assets of the English-language commercial radio station CHLP-FM Listowel, Ontario. FAB also requested a new broadcasting licence to operate the station under the same terms and conditions of licence as those in effect under the current licence.
2. FAB is ultimately owned by Gregory Hetherington (50%) and Raymond Stanton (50%) through 100% ownership and control of their respective companies, GregRadio Corp. and London Publishing Corp, of which each is the sole director. Effective control of FAB is jointly exercised by Gregory Hetherington and Raymond Stanton, who are FAB's sole directors and co-presidents.
3. Both Gregory Hetherington and Raymond Stanton are Canadians, as defined in the *Direction to the CRTC (Ineligibility of non-Canadians)* (the Direction).¹ FAB is therefore eligible to hold a broadcasting licence in accordance with the Direction.
4. Following the close of the transaction, FAB would become the licensee of CHLP-FM.

¹ SOR/97-192, 8 April 1997.

5. The applicant stated that this transaction would be a corporate reorganization conducted for estate planning purposes and therefore proposed a purchase price of \$0 for the assets of CHLP-FM. The proposed value of the transaction is \$3,126. FAB estimated the value of the tangible benefits package, which represents 6% of the proposed value of the transaction, to be \$187.56, to be expended in equal annual payments of \$26.80 over seven consecutive broadcast years. Given the insignificant value of such a tangible benefits package, FAB requested that the Commission waive this requirement.
6. The Commission did not receive any interventions regarding this application.

Regulatory framework

7. Pursuant to subsection 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 subsection 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. To this effect, subsection 11(4) of the *Radio Regulations, 1986* (the Regulations) requires a licensee to obtain 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. Effective control of a licensee or its undertaking is defined in subsection 11(3) of the Regulations, and it includes situations in which:
 - (a) a person controls, directly or indirectly, other than by way of security only, a majority of the voting interests of the licensee;
 - (b) a person has the ability to cause the licensee or its board of directors to undertake a course of action; or
 - (c) the Commission, after a public hearing of an application for a licence, or in respect of an existing licence, determines that a person has such effective control and sets out that determination in a decision or public notice.
9. Under Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy), the Commission requires applicants to provide tangible benefits when changes in ownership result in a change to the effective control of a commercial broadcasting undertaking.
10. 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.
11. The Commission has the authority, pursuant to subsection 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 subsection 3(1) of the Act, as well as to amend those conditions.

Issues

12. After examining the record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
- who would exercise effective control of FAB and CHLP-FM;
 - whether the proposed transaction would contravene the Commission's licence trafficking policy or undermine the integrity of the Commission's original licensing process;
 - whether the proposed transaction would be in the public interest;
 - the value of the transaction and tangible benefits package; and
 - whether the current licensee is in compliance with its regulatory requirements.

Control of FAB and CHLP-FM

13. The proposed transaction would result in Gregory Hetherington reducing his ownership from 51% to 50%.
14. Per section 3.2 of FAB's unanimous shareholders agreement dated 15 July 2021, both Gregory Hetherington and Raymond Stanton may nominate one of the two directors of FAB.
15. Gregory Hetherington, per section 3.6 of the shareholders agreement, is the Chair of FAB's board of directors and would, in the event of a tie vote, per section 3.2 of that agreement, have the casting vote.
16. The Commission considers that Gregory Hetherington would be in a position to cause the licensee or its board of directors to undertake a course of action given his ability to exercise a casting vote.
17. In light of the above, and pursuant to paragraph 11(3)(b) of the Regulations, the Commission finds that effective control of FAB would be exercised by Gregory Hetherington. As such, approval of the proposed transaction would not result in a change in effective control of CHLP-FM.

Licence trafficking and integrity of the Commission's licensing process

18. The Commission, in Broadcasting Public Notice 2008-4, affirmed the need for a licence trafficking policy. Licence trafficking refers to an ownership transaction involving the sale or a change in the effective control of a broadcasting undertaking

within its first licence term or shortly after having been acquired. The decision to award a licence to operate a broadcasting undertaking to a particular person² is based on the merits of the application for that licence, and the sale of a newly licensed undertaking could undermine the integrity of the Commission's licensing process.

19. However, in Broadcasting Information Bulletin 2010-220, the Commission excluded transactions involving a licence granted through a non-competitive process from the above-mentioned licence trafficking policy. The Commission does not choose between competing applicants when awarding a licence in this manner. Therefore, the approval of a subsequent transaction cannot undermine the integrity of the Commission's original licensing process.
20. The Commission approved the application by Five Amigos for a broadcasting licence to operate the station now known as CHLP-FM in Broadcasting Decision 2019-118. CHLP-FM is still in its first licence term, which will end on 31 August 2025. However, the process through which the Commission awarded the licence to operate this station was a non-competitive process.
21. Further, the Commission found in paragraph 17 of this decision that approval of this transaction would not result in a change in effective control of CHLP-FM.
22. In light of the above, given that the proposed transaction involves a licence granted through a non-competitive process and would not result in a change in the effective control of CHLP-FM, the Commission finds that approval of the proposed transaction would neither contravene the Commission's licence trafficking policy nor undermine the integrity of the Commission's original licensing process.

Public interest

23. CHLP-FM serves the community of Listowel.
24. In its application, FAB stated that the proposed transaction would be conducted for estate planning purposes. The proposed transaction would result in the transfer of assets between two corporate entities that are ultimately owned by the same individuals. The applicant also proposed to maintain the current terms and conditions of licence for CHLP-FM.
25. The Commission therefore considers that the proposed transaction would not have any impact on the broadcasting system or on the population currently served by the station.
26. In light of the above, the Commission finds that approval of the proposed transaction would be in the public interest.

² "Person" includes an individual, a partnership, a joint venture, an association, a corporation, a trust, an estate, a trustee, an executor and an administrator, or a legal representative of any of them.

Value of the transaction and tangible benefits package

27. As set out in the Tangible Benefits Policy, 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, working capital to be transferred at closing of the transaction, 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 a period of five years.
28. FAB proposed a value of the transaction of \$3,126. This amount includes the purchase price of the assets (\$0) as well as 1% of the value of assumed long-term debt and leases (\$3,126). The value of the assumed long-term debt and leases is prorated to the amount of voting shares that Gregory Hetherington would acquire.
29. As previously mentioned, the applicant also requested that the Commission waive the requirement to make tangible benefits contributions, since the value of the tangible benefits package, at 6% of the proposed value of the transaction, would be only \$187.56, to be expended in equal annual payments of \$26.80 over seven consecutive broadcast years. The applicant submitted that the value of such a package would be insignificant.
30. The Commission does not consider it necessary to waive the requirement to make tangible benefits contributions. A tangible benefits package is only required in the event of a change in the effective control of an undertaking, and the Commission, in paragraph 17 of this decision, found that approval of this transaction would not result in a change of effective control of CHLP-FM.
31. Accordingly, the Commission determines the value of the transaction to be \$3,126 and finds that no tangible benefits package is required.

Compliance with regulatory requirements

32. When a new licence is issued, the Commission reviews the licensee's compliance with its regulatory requirements. In the case of an asset acquisition, this audit is normally conducted as part of the application review.
33. As mentioned in paragraph 20 of this decision, CHLP-FM is still in its first licence term. The station commenced operations on 15 September 2020, and it had not yet been in operation for a full broadcast year when the Commission reviewed this application. Consequently, at that time, there was no basis on which to assess whether the licensee was operating CHLP-FM in compliance with its requirements.
34. Given that the Commission, when reviewing this application, did not have the information necessary to review the licensee's compliance with its regulatory requirements, the Commission considers that it would be appropriate to conduct a full review at the end of the station's first licence term as part of the licence renewal process.

35. In light of the above, the Commission finds that it would be appropriate to issue a new licence to FAB under the same terms and conditions as those currently in effect.

Conclusion

36. In light of all of the above, the Commission **approves** the application by FAB to acquire from Five Amigos, as part of a corporate reorganization, the assets of the English-language commercial radio programming undertaking CHLP-FM Listowel, Ontario.

37. Upon surrender of the current licence issued to Five Amigos for CHLP-FM, the Commission will issue a new broadcasting licence to FAB under the terms and **conditions of licence** set out in the appendix to this decision.

38. The Commission also **directs** FAB to file, by no later than **30 days after the close of the transaction**, an executed copy of the purchase agreement.

Reminder

39. Pursuant to section 22 of the Act, the broadcasting licence approved 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

- *English-language FM radio station in Listowel*, Broadcasting Decision CRTC 2019-118, 25 April 2019
- *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 for 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
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2022-133

Terms, conditions of licence, expectation and encouragement for the English-language commercial radio programming undertaking CHLP-FM Listowel, Ontario

Terms

The licence will expire 31 August 2025.

Conditions of licence

1. The licensee shall adhere to the conditions set out in the broadcasting licence for the undertaking as well as the conditions set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.
2. In addition to the basic annual contribution to Canadian content development, set out in section 15 of the *Radio Regulations, 1986*, the licensee shall, upon commencement of operations, make an annual contribution of \$1,000 (\$7,000 over seven broadcast years) to the promotion and development of Canadian content.

Of this amount, at least 20% per broadcast year shall be devoted to FACTOR or MUSICACTION. The remainder shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

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.