Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting Decision CRTC 2022-330

PDF version

Reference: 2022-183

Ottawa, 2 December 2022

Acadia Broadcasting Corporation
Vermilion Bay, Dryden, Kenora and Sioux Lookout, Ontario

Public record: 2022-0167-2
Public hearing in the National Capital Region
8 September 2022

CKQV-FM Vermilion Bay and its transmitters CKQV-FM-1 Dryden, CKQV-FM-2 Kenora and CKQV-FM-3 Sioux Lookout – Acquisition of assets

Summary

The Commission **approves** an application by Acadia Broadcasting Corporation for authority to acquire from Golden West Broadcasting Ltd. the assets of the English-language commercial radio station CKQV-FM Vermilion Bay, Ontario, and its transmitters CKQV-FM-1 Dryden, CKQV-FM-2 Kenora and CKQV-FM-3 Sioux Lookout, and to obtain a new broadcasting licence to continue the operation of the station and its transmitters.

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. Acadia Broadcasting Corporation (Acadia) filed an application for authority to acquire from Golden West Broadcasting Ltd. (Golden West) the assets of the English-language commercial radio station CKQV-FM Vermilion Bay, Ontario, and its transmitters CKQV-FM-1 Dryden, CKQV-FM-2 Kenora and CKQV-FM-3 Sioux Lookout. Acadia also requested a new broadcasting licence to continue the operation of the station and its transmitters under the same terms and conditions as those in effect under the current licence.

2. Acadia is owned by Skyline Holdings Incorporated, which is itself ultimately owned by the JEI PTC A Trust. Ultimate effective control is exercised by John K. F. Irving

and Anne C. I. Oxley as the protectors of the JEI PTC A Trust, a family trust for the benefit of the children and remoter issue of John K. F. Irving and Anne C. I. Oxley.[1]

3. Acadia is a Canadian corporation. All members of Acadia's board of directors as well as its chief executive officer are Canadians as defined in the *Direction to the CRTC (Ineligibility of non-Canadians)* (the Direction).[2] Moreover, all of the directors, beneficiaries, trustees and protectors in Acadia's ownership structure are Canadians. Acadia is therefore eligible to hold a broadcasting licence in accordance with the Direction.

4. The purchase price for the assets of CKQV-FM is $1,200,000. Acadia proposed a value of the transaction of $1,648,940 (which comprises the purchase price and leases valued at $454,586 less $5,647 for working capital to be transferred at closing).[3] Acadia did not propose to pay tangible benefits and requested an exception to the requirement to pay tangible benefits as provided in Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy).

5. Following the close of the transaction, Acadia would become the licensee of CKQV-FM and its transmitters.

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

Background

7. CKQV-FM is the only station that serves Vermilion Bay.

8. The communities of Dryden, Kenora and Sioux Lookout receive programming rebroadcast by CKQV-FM's transmitters as well as being served by, respectively, Acadia's commercial stations CKDR-FM Dryden, CJRL-FM Kenora and CKDR-2-FM Sioux Lookout. In addition, Sioux Lookout is served by an Indigenous (Type B Native) station[4] operated by Wawatay Native Communications Society.

9. In addition, the Canadian Broadcasting Corporation (CBC) operates transmitters in Dryden, Kenora and Sioux Lookout that rebroadcast the programming of the CBC's national English-language network service Radio One as well as transmitters in Dryden and Kenora that rebroadcast the programming of the CBC's national French-language network service ICI Radio-Canada Première.[5]

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[1] After submitting the application addressed in this decision, Acadia submitted application 2022-0317-3 to request a change to its ownership and effective control for estate planning purposes. The Commission approved application 2022-0317-3 administratively on 31 August 2022.

[2] SOR/97-192, 8 April 1997.

[3] The total value of the transaction does not correspond to the sum of the separate figures due to rounding.

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

[5] CBQH-FM Dryden, CBQX-FM Kenora and CBLS-FM Sioux Lookout rebroadcast the programming of CBQT-FM Thunder Bay (Radio One). CKSB-6-FM Dryden and CKSB-7-FM Kenora rebroadcast the programming of CKSB-10-FM Winnipeg (ICI Première).

Regulatory framework

10. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act* (Act). Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, that the benefits of the transaction are commensurate with the size and nature of the transaction and that the application represents the best possible proposal under the circumstances.

11. 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 subsection 3(1) of the Act.

12. Subsection 11(4) of the *Radio Regulations, 1986* 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.

13. 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.

14. 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 the Commission 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

15. 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:

    - whether the application is consistent with the Commission's Common Ownership Policy;
    - the public interest of the proposed transaction and its potential impact on the broadcasting system;
    - the tangible benefits package, including the value of the transaction, whether Acadia's requested exception from the requirement to pay tangible benefits should be approved and, if not, the appropriate payment schedule; and
    - the terms and conditions of licence.

Compliance with the Common Ownership Policy

16. The Commission's Common Ownership Policy for radio[6] sets out that in radio markets with fewer than eight commercial stations operating in a particular language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band.

17. If the Commission approves the proposed acquisition of CKQV-FM and its transmitters, Acadia would own the following:

    - one station in Vermilion Bay (i.e. CKQV-FM, which it would acquire);
    - one station and one transmitter in Dryden (i.e. CKDR-FM, which it already owns, and the rebroadcasting transmitter CKQV-FM-1, which it would acquire);
    - one station and one transmitter in Kenora (i.e. CJRL-FM, which it already owns, and the rebroadcasting transmitter CKQV-FM-2, which it would acquire); and
    - one station and one transmitter in Sioux Lookout (i.e. CKDR-2-FM, which it already owns, and the rebroadcasting transmitter CKQV-FM-3, which it would acquire).

18. Acadia would therefore not exceed the above-mentioned limits for markets served by fewer than eight commercial stations operating in a particular language. More specifically, Acadia would neither operate more than three stations in a given language nor more than two stations in a given frequency band.

19. In light of the above, the Commission finds that the proposed transaction is in compliance with the Commission's Common Ownership Policy for radio.

Public interest and impact on 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 Commission must be persuaded that the proposed transaction benefits Canadians and the broadcasting system.

21. Acadia indicated that it would broadcast only programming produced by or for CKQV-FM and that it would, as Golden West has done, commit to supporting local and national news, including by, at a minimum, committing to the following:

    - maintaining two staff members dedicated to news gathering and reporting;
    - broadcasting 55 newscasts (4.4 hours of news in total) per week;

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[6] Set out in Public Notice 1998-41 and reiterated in Broadcasting Information Bulletin 2010-341.

- featuring an average of five local stories per newscast;
- ensuring that 90% of news stories are locally related; and
- exercising independent editorial judgment based upon Acadia's *News Policies and Guidelines* as well as the Radio Television Digital News Association's *Code of Ethics*.

22. The applicant added that it intends to promote community events, broadcast public service announcements and encourage the station's staff to volunteer with community organizations and agencies.

23. Acadia submitted that the proposed transaction would be in the public interest because it, as the operator of a number of stations in Northwestern Ontario, would be well-positioned to ensure the long-term financial viability of CKQV-FM and its transmitters, which still face challenges due to the COVID-19 pandemic and are currently unprofitable. According to Acadia, its presence in adjacent markets would allow it to primarily cut overhead and non-programming costs, which would maximize the revenues that could be devoted to programming, digital products and local initiatives.

24. Acadia added that it has significant experience operating community-based, locally focused radio stations and would be able to leverage existing regional partnerships to build relationships with local community, media, business, and government representatives. As such, in Acadia's view, its experience and existing network would allow it to increase the quality of the service provided by CKQV-FM and its transmitters and to ensure that, in the long term, the station and transmitters attain financial viability.

25. The Commission recognizes that CKQV-FM has been struggling financially and has incurred significant losses over the course of the last ten years. The station's difficulties preceded but were aggravated by the COVID-19 pandemic. In the Commission's view, it is likely that Acadia would be able to improve the financial position of CKQV-FM, and it would be detrimental to the public interest for CKQV-FM and its transmitters to cease operations because they failed to achieve financial viability. This is particularly true for Vermilion Bay, which is served only by CKQV-FM.

26. The Commission is concerned that concentrated ownership in these markets could result in decreased diversity of voices. The proposed transaction would have no impact on the diversity of voices available in Vermilion Bay, which is served only by CKQV-FM. It would, however, result in Acadia owning and operating all of the commercial undertakings that serve the communities of Dryden, Kenora and Sioux Lookout. As such, it would result in a decrease in the diversity of voices available in those communities. Nonetheless, although this transaction would concentrate ownership in these small markets, the public interest would be better served by avoiding the closure of CKQV-FM and its transmitters.

27. Finally, the Commission notes that Acadia has indicated that all of its programming will be produced by or for CKQV-FM, and that this will exceed the requirement set out in paragraphs 206 to 207 of Broadcasting Public Notice 2006-158 that a minimum of one-third of the broadcast week be devoted to local programming.[7]

28. In light of the above, the Commission finds that the proposed transaction is in the public interest.

Tangible benefits

29. The Commission's policy regarding the payment of tangible benefits is set out in the Tangible Benefits Policy. As stated in that regulatory policy, the payment of tangible benefits serves the public interest by, among other things, increasing the quantity and quality of Canadian programming and providing increased support for the creation, distribution and promotion of such programming. The Commission finds it appropriate to require that tangible benefits generally be provided for changes to the effective control of all radio and television programming services.

30. For the purpose of calculating the value of the tangible benefits, the Commission looks at the value of the transaction as a whole, including the value of the gross debt, working capital to be transferred at closing, ancillary agreements, any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities. The value of the leases is calculated over a five-year period. These elements, if relevant, are added to the purchase price.

Value of the transaction

31. Pursuant to the asset purchase and sale agreement, the purchase price for the assets of CKQV-FM and its transmitters is $1,200,000. Acadia proposed that the value of the transaction be determined to be $1,648,940, which would comprise the purchase price and leases assumed by Acadia (valued at $454,586) less $5,647 for working capital transferred at closing.[8] There are no ancillary agreements and no assumed debt would be transferred.

32. In Acadia's response dated 23 June 2022 to a Commission request for information, Acadia clarified that the adjustment of $5,647 would comprise the commissions

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[7] "Local programming" is defined in paragraph 207 of Broadcasting Public Notice 2006-158 as follows:

> Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.
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> In their local programming, licensees must incorporate spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports coverage, and the promotion of local events and activities.

[8] As previously mentioned, the total does not correspond to the sum of the separate figures due to rounding.

payable to sales staff for the month prior to the close of transaction (assuming a month-end close) and indicated that it would not object to that amount being included in the value of the transaction. Acadia also clarified that the value assigned to the leases was calculated over a period varying from 27 to 54 months rather than the standard five-year period (i.e. 60 months) because it would move the CKQV-FM studios to a location that it already owns in Acadia and consolidate the transmitters in Kenora and Dryden. Acadia excluded the Sioux Lookout tower lease, which it would continue leasing based on the current month-to-month arrangement for up to two years, before consolidating that transmitter as well. Lastly, Acadia determined that consolidation wouldn’t be possible for the Vermilion Bay tower and proposed a five-year lease value in its response to the Commission dated 23 June 2022.

33. As noted above, the Commission calculates the value of leases for real property over a five-year period. The Commission has, in the past, accepted to calculate the value of a given lease over a shorter timeframe when the applicant has clearly demonstrated that the lease in question would not need to be renewed. The Commission is of the view that Acadia has clearly demonstrated that the lease for the CKQV-FM studio would not need to be renewed. However, the station and its rebroadcasting transmitters would still require transmitter sites in Vermilion Bay, Dryden, Kenora and Sioux Lookout.

34. The Commission notes that the applicant has not provided precise plans for the relocation of these transmitter sites and that the leases for these sites are essential to continue the operation of CKQV-FM and its transmitters. Furthermore, there is no guarantee that any of these proposed relocations will take place (since any such relocation would require the approval of an application to change the technical parameters of the station or transmitter in question). Accordingly, the Commission considers that it would be appropriate to calculate the value of each of the current leases over a five-year term.

35. As for the adjustment for the working capital, the Commission considers that the proposed adjustment would not be consistent with the Tangible Benefits Policy as such an adjustment, based only on deferred revenues and prepaid expenses, is not included in the Tangible Benefits Policy. In addition, the Commission notes that, as mentioned above, the applicant did not object to the inclusion of this amount.

36. The Commission has revised the amounts according to its practice and has established the value of the transaction at $1,953,231, as follows:

Item	Amount
Purchase price	$1,200,000
Additions	
Assumed debt	$0
Assumed leases	$753,231
Value of the transaction	**$1,953,231**

Exception from requirement to pay tangible benefits

37. As set out in the Tangible Benefits Policy, the Commission generally requires the payment of tangible benefits when there is a change to the effective control of a broadcasting undertaking. However, there may be cases where the public interest could be fully met without requiring the payment of tangible benefits if all of the following criteria are met:

    - the undertaking to be acquired is not in its first licence term;
    - the undertaking has suffered significant financial losses over an extended period of time (at least five consecutive years following the first licence term); and
    - 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.

38. When such an exception is requested, the onus is on the applicant to show that the public interest is fully met without the payment of tangible benefits. The Tangible Benefits Policy also states that the Commission may exercise its discretion at all times and that an exception will not necessarily be granted even if the three criteria are met.
39. Acadia has submitted that the proposed acquisition meets the three criteria mentioned above and has therefore requested an exception.
40. The Commission authorized the operation of the station now known as CKQV-FM and two of its transmitters in Broadcasting Decision 2004-143 for a first licence term that ended on 31 August 2010. Given that the undertaking to be acquired is not in its first licence term, the Commission considers the first of the three above-mentioned criteria to have been met.
41. The Commission also acknowledges that the station has experienced significant financial losses over an extended period of time following the end of that first licence term in 2010. More specifically, the station has suffered significant financial losses over each of the last ten consecutive years. The Commission therefore considers the second of the three above-mentioned criteria to have been met.
42. In regard to the third criterion, Acadia submitted that the station’s financial position has been worsened by the impact of the COVID-19 pandemic on advertisers and supply chains, which it believes will have long-term effects on the radio sector. According to the applicant, maintaining the undertaking poses significant challenges and the proposed transaction offers the best possibility of CKQV-FM achieving viability. Acadia also submitted that the loss of the station and its transmitters, given their listenership and strong local presence, would not be in the public interest.
43. The Commission considers that Acadia has demonstrated that there is a public interest in approving the proposed acquisition and is also of the view that approval of the transaction may improve the likelihood of CKQV-FM achieving viability. However, the Commission also considers that these factors alone do not demonstrate that the public interest is fully met without tangible benefits.

44. The Commission considers both the tangible and intangible benefits of any given transaction. In cases where the applicant is requesting an exception to the payment of tangible benefits, the Commission may accept a package consisting solely of intangible benefits, particularly when the survival of a service is at stake, but it also recognizes the value of investing in the Canadian broadcasting system, particularly in light of the rapid pace of change in the broadcasting environment.

45. The Commission recognizes Acadia's stated commitment to local programming but notes that the applicant has requested that the Commission issue it a licence under the same terms and conditions as those currently in effect. Acadia did not propose the imposition of any new conditions of licence that would require it to promote emerging artists, broadcast additional hours of local news or other local programming, or otherwise offset the loss of contributions to Canadian content development (CCD) that would result from the granting of an exception and the loss of possible benefits to the Canadian broadcasting system that might result from a competitive process.

46. The Commission acknowledges that Acadia, in pursuing this transaction, would take on a certain level of risk by acquiring an undertaking that is struggling financially. The Commission also acknowledges that additional commitments (i.e. commitments above and beyond those proposed by Acadia in its application) could be onerous. However, the Commission is of the view that Acadia would be acquiring valuable assets and would be able to leverage its existing presence in the region to create synergies. In addition, the Commission notes that Acadia would become the sole commercial radio operator in the region. The Commission therefore considers that Acadia would be in a position to attract advertising revenues with little competition and that Acadia's operation of multiple commercial stations in the small markets of the region could represent a barrier to future entrants. The Commission therefore considers that the payment of tangible benefits would be commensurate with the competitive advantage that would be accorded to Acadia and would offset the negative impact that could result from the decrease in diversity of voices.

47. The Commission, in a request for information dated 9 June 2022, asked Acadia whether it would pursue this transaction if the Commission denied its request for an exception. In a response dated 16 June 2022, Acadia indicated that the imposition of tangible benefits would impact its efforts to improve the performance of the station but that it would reluctantly, in accordance with the asset purchase agreement that it entered into with Golden West, close the transaction.

48. In light of the above, the Commission **denies** the request by Acadia for an exception to the requirement to pay tangible benefits.

Allocation of tangible benefits and payment schedule

49. Based on the revised value of the transaction and consistent with the Tangible Benefits Policy, the Commission **requires** Acadia to pay tangible benefits amounting to $117,194 (6% of the adjusted value of the transaction [i.e. $1,953,231]), to be allocated as follows:

    - 3% ($58,597) to Radio Starmaker Fund or Fonds Radiostar;
    - 1.5% ($29,299) to FACTOR or Musicaction;
    - 1% ($19,532) to any eligible CCD initiative at the discretion of the purchaser; and
    - 0.5% ($9,766) to the Community Radio Fund of Canada (CRFC).

50. Payment of these tangible benefits shall be made in equal annual payments (i.e. $16,742 per year) over seven consecutive broadcast years (i.e. the period spanning the 2022-2023 through 2028-2029 broadcast years).

Terms and conditions of licence

51. When a new licence is issued, the Commission reviews the licensee's compliance with its regulatory obligations, in particular those relating to the filing of annual reports and CCD contributions. In the case of an asset acquisition, the compliance audit is conducted at the time of application review rather than at the time of licence renewal.

52. The Commission has determined that CKQV-FM is in compliance with its regulatory requirements, including the submission of annual reports and the payment of CCD contributions. No issues have been identified during the station's current licence term.

53. Given the absence of any identified compliance issues, the Commission finds that it would be appropriate to issue a new licence to Acadia under the same terms and **conditions** as those in effect under the current licence for a seven-year licence term.

54. The current licence for CKQV-FM will expire 31 August 2023, and the station was therefore listed in the appendix to Broadcasting Notice of Consultation 2022-151, in which the Commission called for licence renewal applications. Golden West has since submitted a licence renewal application (2022-0611-9), which the Commission received on 17 August 2022. Should Golden West and Acadia complete the transaction addressed in this decision, the Commission will, upon being informed of the close of the transaction, return application 2022-0611-9.

Conclusion

55. In light of all of the above, the Commission **approves** the application by Acadia to acquire from Golden West the assets of the English-language commercial radio station CKQV-FM Vermilion Bay, Ontario, and its transmitters CKQV-FM-1 Dryden, CKQV-FM-2 Kenora and CKQV-FM-3 Sioux Lookout.

56. In addition, the Commission **denies** Acadia's request for an exception to the payment of tangible benefits as set out in Broadcasting Regulatory Policy 2014-459 and **requires** Acadia to pay tangible benefits amounting to $117,194 over seven consecutive broadcast years in accordance with the payment allocations and schedule set out in paragraphs 49 and 50 of this decision, and to submit acceptable proofs of payment.

57. Acadia shall notify the Commission of the close of the transaction and, upon surrender of the current licence issued to Golden West, the Commission will issue a new broadcasting licence to Acadia, which will expire 31 August 2029. The terms and **conditions of licence** for CKQV-FM and its transmitters are set out in the appendix to this decision.

Reminder

58. 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 certificates issued by the Department of Industry lapse.

Employment equity

59. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Employment and Social Development, its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Call for licence renewal applications*, Broadcasting Notice of Consultation CRTC 2022-151, 10 June 2022
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Revised guidelines for the application of the Common Ownership Policy for Radio*, Broadcasting Information Bulletin CRTC 2010-341, 4 June 2010
- *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

- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *English-language FM radio station in Vermilion Bay*, Broadcasting Decision CRTC 2004-143, 13 April 2004
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998
- *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 2022-330

Terms, conditions of licence and expectation for the English-language commercial radio station CKQV-FM Vermilion Bay, Ontario, and its transmitters CKQV-FM-1 Dryden, CKQV-FM-2 Kenora and CKQV-FM-3 Sioux Lookout

Terms

The licence will expire 31 August 2029.

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 as well as those set out in the broadcasting licence for the undertaking.

2. The licensee shall ensure that all programming broadcast on the rebroadcasting transmitters CKQV-FM-1 Dryden and CKQV-FM-2 Kenora is identical to the programming that originates from its Vermilion Bay studio and is broadcast on CKQV-FM Vermilion Bay.

Expectation

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