Broadcasting Decision CRTC 2022-336

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Reference: 2022-201

Ottawa, 8 December 2022

Gospel Media Communications
Montréal, Quebec

Public record: 2022-0156-5
Public hearing in the National Capital Region
13 October 2022

CJRS Montréal – Acquisition of assets

Summary

The Commission **approves** an application by Gospel Media Communications for authority to acquire from Radio Chalom the assets of the religious AM radio station CJRS Montréal, Quebec.

Background

1. On 25 May 2017, Gospel Media Communications (GMC) entered into a memorandum of understanding with Radio Chalom to acquire 100% of the operations of the radio station CJRS Montréal, Quebec, by purchasing its equipment and assuming its debts. According to the minutes of the Radio Chalom board of directors meeting, the transfer of ownership would only be completed once all of the steps outlined in the memorandum of understanding had been completed.

Application

2. On 7 April 2022, GMC filed an application for authority to acquire from Radio Chalom the assets of the religious AM radio station CJRS Montréal and for a new broadcasting licence to continue the operation of the station under the same terms and conditions as those in effect under the current licence.

3. GMC is a not-for-profit corporation effectively controlled by its board of directors. GMC has been cooperating with Radio Chalom since 2017 to offer programming that serves both the Jewish and Christian communities.

4. Radio Chalom, a not-for-profit corporation effectively controlled by its board of directors, operates a religious radio station on the AM frequency 1650 in Montréal.

5. Following the close of the transaction, GMC would become the owner of CJRS.

6. At the time the transaction began in May 2017, GMC valued Radio Chalom at $236,000. As a result of the financial support that it has provided to Radio Chalom in recent years, GMC would acquire the assets of Radio Chalom for $0. GMC therefore stated that it should not have to pay any tangible benefits.

7. The Commission received four interventions in support of this application from citizens who noted the “bi-religious” nature of the station and indicated that they wanted the station to maintain its current programming.

8. The Commission also received three interventions in opposition to the application from two citizens and a broadcasting consultant, all of whom raised concerns over the fact that the transaction was carried out without prior Commission approval and over GMC’s request to avoid having to pay tangible benefits.

Regulatory framework

9. 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 many objectives of the Act and of the Canadian broadcasting policy set out in subsection 3(1) in the Act. The examination of ownership transactions in the public interest is part of the Commission’s regulatory and supervisory mandate under the Act. Specifically, the Act states that the Canadian broadcasting system must be effectively owned and controlled by Canadians. The definition of “Canadian” can be found in the *Direction to the CRTC (Ineligibility of Non-Canadians)*[1] (the Direction).

10. Consequently, pursuant to paragraph 11(4)(a) of the *Radio Regulations, 1986* (the Regulations), a 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.

11. The review of ownership transactions is an essential part of the Commission’s regulatory and supervisory mandate under the Act. Since the Commission does not solicit competing applications to change the effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, that the benefits to be derived from the transaction are commensurate with the size and nature of the transaction, and that the application represents the best possible proposal in the circumstances.

12. The Commission must consider the merits of each application in light of its own circumstances. In addition, the Commission must be satisfied that approval of the proposed ownership transaction is in the public interest, as defined by the objectives set out in subsection 3(1) of the Act.

[1] SOR/97-192

Issues

13. After examining the record of this application in light of applicable regulations and policies, the Commission considers that it must address the following issues:

- GMC's compliance in regard to the change of effective control;
- Canadian ownership and control;
- whether the transaction serves the public interest;
- the value of the transaction and tangible benefits; and
- compliance with regulatory requirements.

GMC's compliance in regard to the change of effective control

14. According to the memorandum of understanding dated 25 May 2017, GMC spent a total of $236,000 on loan repayments, equipment transfers and severance payments. In return, after completing these payments, GMC obtained effective control of Radio Chalom on 31 October 2021, when GMC selected and elected all members of the Radio Chalom board of directors. GMC filed its application for the acquisition of assets with the Commission on 7 April 2022.

15. In light of the above, the Commission finds that the change in effective control occurred on 31 October 2021, without prior Commission approval. Accordingly, the Commission finds GMC to be in non-compliance with paragraph 11(4)(a) of the Regulations.

Canadian ownership and control

16. The Commission reviewed the application pursuant to the Direction. GMC is a Canadian not-for-profit entity with a board of directors composed entirely of Canadians. André Joly, the Chair of the board of directors, is Canadian. Lastly, GMC is effectively controlled by the board of directors. Accordingly, the Commission is satisfied that CJRS Montréal will be owned and controlled by Canadians following the close of the proposed transaction.

Public interest

17. To determine whether the proposed transaction serves the public interest, the Commission considered a range of factors set out in the Act, including the nature of the programming and the services provided to the communities served, as well as regional, social, cultural, economic and financial considerations. The Commission must be satisfied that the proposed transaction serves Canadians and the broadcasting system.

18. According to GMC, Radio Chalom was in financial trouble when the memorandum of understanding was entered into in May 2017. These financial difficulties jeopardized the survival of Radio Chalom and, consequently, the continuity of its religious programming, mainly intended for Montréal's Jewish community. By buying Radio Chalom (that is, by paying off its debt), GMC committed to comply with the same conditions of licence imposed on Radio Chalom.

19. The Commission notes that, *a priori*, GMC has complied with Radio Chalom's conditions of licence. Further, the Commission also notes that since 2017, following the signing of the memorandum of understanding, CJRS's programming has been expanded to include Christian programming.

20. The Commission also notes that prior to the beginning of the transaction, Radio Chalom was in a weaker financial position and that the survival of CJRS was threatened. Five years later, GMC has turned things around, and now the station is no longer operating at a loss. If GMC were to divest itself of Radio Chalom's asset, it is likely that the station's survival would again be threatened.

21. In a supplementary submission, GMC filed a letter written by Jacques Saada, President of the Communauté sépharade unifiée du Québec, in which he welcomed the current collaboration between Radio Chalom and Radio Gospel (GMC's operational name). The letter is dated December 2021 and demonstrates the Jewish community's satisfaction with the current Jewish-Christian programming. Therefore, it can be assumed that having GMC maintain the *status quo* in regard to the operation of the licence would not have a negative impact on the Jewish community.

22. In light of the above, the Commission finds that approval of the proposed transaction would ensure that CJRS continues to serve Montréal's Jewish and Christian communities. Accordingly, the Commission finds that approval of the transaction would serve the public interest.

Value of the transaction and tangible benefits

23. The Commission's policy regarding the payment of tangible benefits is set out in Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy). As stated in that regulatory policy, since the Commission does not solicit competing applications for changes in ownership or effective control of broadcasting undertakings, the burden is on the applicant to demonstrate that its application is the best possible proposal and that its approval is in the public interest, consistent with the overall objectives of the Act. As one way of ensuring that the public interest is served, the Commission expects applicants to propose financial contributions (known as "tangible benefits") that are proportionate to the size and nature of the transaction, with the goal of yielding measurable improvements to the communities served by the broadcasting undertaking to be acquired, as well as to the Canadian broadcasting system as a whole. Tangible benefits are generally directed to the production of Canadian programming, which serves the public interest in two main ways:

    - viewers or listeners benefit directly through an increase in the quantity and quality of Canadian programming; and

    - creators benefit through increased support for the creation, distribution and promotion of Canadian programming.

24. For radio undertakings, tangible benefits must generally represent at least 6% of the value of the transaction and be allocated as follows:

- 3% to Radio Starmaker Fund or Fonds Radiostar;
- 1.5% to FACTOR or Musicaction;
- 1% to any eligible Canadian content development (CCD) initiative at the discretion of the purchaser; and
- 0.5% to the Community Radio Fund of Canada (CRFC).

25. In calculating the value of tangible benefits, the Commission considers the overall value of the transaction, including the amount of gross debt, working capital to be transferred at closing, related agreements, assumed leases for real property only (buildings, studios and offices) and transmission facilities. The value of the leases is calculated over a five-year period. If relevant, these elements are added to the purchase price.

26. GMC claimed that the purchase price for Radio Chalom is $0, given that it will not be paying any amount to Radio Chalom at closing. Certain interveners who opposed the transaction expressed their disagreement with GMC's calculation. These interveners pointed out that, in addition to the amount paid to acquire broadcasting equipment, severance payments were made to the President of Radio Chalom. GMC did not dispute that these amounts were paid and agreed that they should be taken into consideration, if required by the Commission, in determining the value of the transaction.

27. The Commission notes that from May 2017 onward, GMC has made several payments to Radio Chalom in order to acquire the station. According to the data provided by GMC, $236,000 was paid to Radio Chalom. In addition, in determining the value of a transaction, the Commission includes the value of leases over a five-year (60-month) period. GMC stated that as of May 2021, Radio Chalom's monthly lease is set at $1,218.75.

28. Accordingly, the Commission has revised the amounts and established the value of the transaction at $309,125 as follows:

Item	Amount
Purchase price	
Amount paid according to the memorandum of understanding	$236,000
Additional costs	
Assumed leases	$73,125
Value of the transaction	**$309,125**

29. Since the transaction was only for the purpose of acquiring equipment, repaying debt and paying the unpaid salary of the former President of Radio Chalom, GMC considered that it was excluded from the obligation to pay tangible benefits. However, in a response to a request for information from the Commission, GMC confirmed that it would agree, if required by the Commission, to pay tangible benefits in the amount of $18,548 over seven years.

30. Based on the revised value of the transaction and in accordance with the Tangible Benefits Policy, the Commission requires GMC to pay $18,548 in tangible benefits (6% of the transaction value) in equal annual payments over seven consecutive broadcast years, allocated as follows:

- 3% ($9,274) to Radio Starmaker Fund or Fonds Radiostar;
- 1.5% ($4,637) to FACTOR or Musicaction;
- 1% ($3,091) at the discretion of the purchaser, to any eligible CCD initiative; and
- 0.5% ($1,546) to the CRFC.

Compliance with regulatory requirements

31. The Commission notes that the broadcasting licence for CJRS was renewed in 2017 for a full seven-year licence term until 31 August 2024.

32. The Commission has reviewed CJRS's compliance with regulatory requirements and has not identified any instances of apparent non-compliance relating to the filing of annual returns for the current licence term.

33. In light of the above, the Commission considers that it is appropriate to grant GMC a broadcasting licence that will expire 31 August 2024. Compliance by CJRS will be re-examined as part of the station's next licence renewal.

Conclusion

34. In light of all the above, the Commission **approves** the application by GMC for authority to acquire from Radio Chalom the assets of the religious AM radio programming undertaking CJRS Montréal, Quebec. In addition, the Commission requires GMC to pay tangible benefits in the amount of $18,548 in equal annual payments over seven consecutive broadcast years.

35. Upon surrender of the current licence issued to Radio Chalom, the Commission will issue a new broadcasting licence to GCM, which will expire on 31 August 2024. The terms and **conditions of licence** for this station are set out in the appendix to present decision.

Reminders

36. Pursuant to the Regulations, licensees are required to obtain prior approval from the Commission before making a change in the effective control of any broadcasting undertaking.

37. Compliance by the station CJRS will be re-examined as part of the next licence renewal, and GMC will be held responsible for any previous instances of non-compliance once the new licence is granted to GMC.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2022-201, 2 August 2022

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

This decision is to be appended to the licence.

Appendix to Broadcasting Decision CRTC 2022-336

Terms, conditions of licence, expectation and encouragement for the religious radio programming undertaking CJRS Montréal, Quebec

Terms

The licence will expire 31 August 2024.

Conditions of licence

1. The licensee shall adhere to the conditions set out in *Revised conditions of licence for AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2022-334, 7 December 2022, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. The licensee shall devote at least 90% of all musical selections broadcast each broadcast week to selections drawn from content category 3 (Special Interest Music), as set out in *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2022-333, 7 December 2022.
3. As an exception to the percentage of Canadian musical selections set out in subsection 2.2(3) of the *Radio Regulations, 1986* (the Regulations), the licensee shall devote, in each broadcast week, at least 12% of its musical selections drawn from content category 3 (Special Interest Music) to Canadian selections.

   For the purposes of this condition of licence, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the meanings as those set out in the Regulations.
4. Where the licensee broadcasts religious programming as defined in *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993, the licensee shall adhere to the guidelines set out in sections III.B.2.a) and IV of that public notice with respect to the provision of balance and ethics in religious programming.
5. In each broadcast week, the licensee shall broadcast at least 18 hours of balanced programming.

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.