



Broadcasting Decision CRTC 2006-566

Ottawa, 29 September 2006

Standard Radio Inc., on behalf of a limited partnership to be established (SR Limited Partnership)

Quebec, Ontario, Manitoba, Alberta and British Columbia

Application 2006-0595-9

Public Hearing in the National Capital Region

1 August 2006

Intra-corporate reorganization – Acquisition of assets

*The Commission **approves**, subject to the filing requirements set out below, the application by Standard Radio Inc. (Standard), on behalf of a limited partnership to be established (SR Limited Partnership), to implement an intra-corporate reorganization involving the broadcasting undertakings of Standard. Further, the Commission will issue new broadcasting licences to Standard GP Inc. (described below), the general partner, as well as to Standard Radio Holdings Inc. (described below) and Standard, the limited partners, to carry on business as SR Limited Partnership, upon surrender of the licences issued to Standard.*

The application

1. The Commission received an application by Standard Radio Inc. (Standard), on behalf of a limited partnership to be established (SR Limited Partnership), to implement an intra-corporate reorganization involving the broadcasting undertakings of Standard. The applicant further requested that new broadcasting licences be issued to the partners of SR Limited Partnership to continue the operation of the broadcasting undertakings currently operated by Standard under the same terms and conditions as those in effect under the current licences.
2. Standard is a wholly-owned subsidiary of Standard Broadcasting Corporation Limited (Standard Broadcasting), which in turn is a wholly-owned subsidiary of Slaight Communications Inc. (Slaight Communications), a private corporation. Mr. Allan Slaight, a Canadian citizen, owns 100% of the issued and outstanding shares of Slaight Communications.
3. Standard is the licensee of 51 radio programming undertakings and related transmitters and 7 transitional digital radio undertakings throughout Quebec, Ontario, Manitoba, Alberta and British Columbia, as well as 2 conventional television stations in British Columbia and 3 radio networks in British Columbia and Quebec.

4. Standard holds minority interests in the licensees 3937844 Canada Inc., Milestone Radio Inc. and The Haliburton Broadcasting Group Inc. Further, it holds a 40% interest in Sirius Canada Inc. The applicant indicated that the licensees in which Standard holds minority interests would not be affected by the proposed reorganization as the reorganization only includes the transfer of Standard's wholly-owned broadcasting undertakings to SR Limited Partnership.
5. The proposed transaction can be summarized as follows:
 - Standard Radio Income Fund (the Fund) would be established pursuant to a Declaration of Trust (the Declaration).
 - The Fund would incorporate a new wholly-owned subsidiary, Standard Radio Holdings Inc. (Standard Holdings).
 - Standard would incorporate a new corporation, Standard Radio GP Inc. (Standard GP) to be owned by Standard, which would hold a 60% voting interest, and by Standard Holdings, which would hold a 40% voting interest.
 - Standard and Standard GP would establish SR Limited Partnership.
 - Standard Holdings would acquire units of SR Limited Partnership from Standard representing an approximate 40% partnership interest.
 - Standard would own exchangeable units in SR Limited Partnership, representing an approximate 60% partnership interest and would receive a corresponding number of Special Voting Units in the Fund.
 - SR Limited Partnership would acquire the assets of the broadcasting undertakings from Standard.
 - Upon completion, Standard GP would become the general partner of SR Limited Partnership.
6. As a result of the proposed reorganization, upon surrender of the current licences issued to Standard, new licences would be issued to Standard GP, the general partner, as well as to Standard and Standard Holdings, the limited partners, to carry on business as SR Limited Partnership, to continue the operation of the broadcasting undertakings under the same terms and conditions as those in effect under the current licences.

Control of the broadcasting undertakings

7. The applicant stated that the proposed reorganization would not result in any change in the ultimate control of the broadcasting undertakings, which would remain with Mr. Allan Slaight. The general partner of SR Limited Partnership, Standard GP, a corporation to be majority owned and controlled by Standard, would in turn be ultimately controlled by Mr. Slaight.

Compliance with the *Direction to the CRTC (Ineligibility of Non-Canadians)*

8. The applicant contended that the proposed reorganization would comply with the *Direction to the CRTC (Ineligibility of Non-Canadians)*¹ (the Direction) at all times, as each of the partners of SR Limited Partnership (including the general partner Standard GP) would be “Canadian” pursuant to the Direction.
9. Because a partnership is not a legal entity, it is the Commission’s practice to look at each of the partners individually to ensure that each is “Canadian” and that the proposed structure will comply with the Direction at all times. Standard, one of the limited partners, raises no issues with regard to its compliance with the Direction. However, Standard Holdings, the other limited partner, and Standard GP, the general partner, raise questions with respect to their compliance with the Direction, and the applicant was asked to address this matter.
10. The applicant noted that Standard GP’s initial Board of Directors would consist of one director, to be appointed by Standard and who would be a “Canadian,” as defined in the Direction. Upon approval of this application, Standard GP’s board would be increased to seven directors. The applicant indicated that the Chief Executive Officer and not less than 80% of the directors would be “Canadians” within the meaning of the Direction and that, upon completion, Standard would hold approximately 60% of the voting shares in Standard GP, thereby controlling Standard GP.
11. The applicant also noted that all of the voting shares of Standard Holdings would be issued and registered in the name of the Trustees of the Fund and would be the Fund’s major asset. The Fund units, when issued, would be held by investors (the Unitholders) who would purchase such units pursuant to a planned public offering of the units.
12. The applicant stated that “Canadians” would beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, the voting shares of Standard Holdings, as required by the Direction, on the basis that:
 - The Unitholders would have a limited right of enjoyment in the Fund’s Assets (referred to herein as the Fund Assets), which includes the voting shares of Standard Holdings. This right of enjoyment would be a personal right and not a proprietary one and would be limited to a contractual right to receive distributions from the Fund.
 - Both legal and beneficial ownership and control of the voting shares of Standard Holdings would reside with the Trustees of the Fund, not with the Unitholders of the Fund.
 - The interest of the Unitholders of the Fund would be a personal right to distributions from the Fund, not a legal or beneficial ownership interest in the property of the Fund.

¹ *Direction to the CRTC (Ineligibility of Non-Canadians)*, P.C. 1997-486, 8 April 1997, amended by P.C. 1998-1268, 15 July 1998.

- While the Unitholders would have a right to prevent the Trustees from selling the voting shares of Standard Holdings pursuant to the Declaration, this right would not confer upon the Unitholders legal or beneficial ownership or control of such shares. This right would merely protect the Unitholders' contractual right to receive distributions from the Fund during the term of the Fund.
13. As a result, the applicant concluded that all of the incidents of ownership and control of the voting shares of Standard Holdings would reside with the Trustees and, therefore, the Trustees would have both legal and beneficial ownership and control of the Fund Assets, including the voting shares of Standard Holdings, during the term of the Fund. To ensure compliance with the Direction, the Declaration includes a provision that all Trustees must be Canadian citizens, ordinarily resident in Canada. In addition, with respect to the Unitholders, the applicant stated that the Declaration also includes a provision that the Trustees have the specific power and authority to ensure compliance at all times with the Direction during the term of the Fund.
 14. Only upon dissolution of the Fund would the Unitholders be entitled to an equal undivided beneficial interest in any net Fund Assets, subject to the Commission's prior approval. Assuming the Fund Assets would be distributed *in specie* to the Unitholders at that time, the applicant stated that the rights of the Unitholders would change from a personal right of enjoyment to legal and beneficial ownership of the trust property to be distributed to them. Thus, the right of the Unitholders to voting shares in the Fund Assets would only be effective upon termination of the Fund and subject to the prior approval of the Commission, thereby ensuring compliance with the Direction at all times.
 15. The applicant recognized that the Direction requires "beneficial ownership and control" of the voting shares of Standard Holdings and Standard GP to be held by "Canadians." The applicant submitted that beneficial interest granted to beneficiaries under a trust is not to be confused with the beneficial ownership and control required under the Direction. In the case at hand, it argued, all of the incidents of ownership and control of the voting shares of Standard Holdings would reside with the Trustees during the term of the Fund.

Interventions

16. The Commission did not receive any interventions in connection with this application.

Commission's analysis and determinations

17. The Commission has carefully examined the proposed ownership structure resulting from the series of transactions affecting Standard's broadcasting undertakings. The proposed structure includes the ownership of such undertakings by SR Limited Partnership whereby licences would be issued to Standard GP, the general partner, as well as to Standard and Standard Holdings, the limited partners.

Compliance with the Direction

18. The purpose of the Direction is to ensure Canadian ownership and control of the Canadian broadcasting system by requiring each licensee to be “Canadian.” To be eligible to hold a licence, corporations must have Canadian participation at each of the board, management and shareholder levels. At the shareholder level, the requirement is that “...Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 80 per cent of all the issued and outstanding voting shares of the corporation, and not less than 80 per cent of the votes....”
19. As set out above, under the proposed structure, the partners of SR Limited Partnership would be Standard, Standard GP and Standard Holdings. Standard GP would be owned 60% by Standard and 40% by Standard Holdings. For Standard Holdings and Standard GP, the application states that the chief executive officers and not less than 80% of their directors would be “Canadian” as required by the Direction. Standard, the current licensee of the broadcasting undertakings which are the subject of this application, is “Canadian” for the purposes of the Direction.
20. The only question that arises is whether Standard Holdings and Standard GP would meet the shareholdings requirement of the Direction.
21. All of the voting shares of Standard Holdings would be owned by the Fund. The Fund would consist of a number of Trustees, each of whom would be required by the Declaration to be “Canadian,” and a number of Unitholders for whom there is no specific requirement to be “Canadian.”
22. As set out above, the applicant indicated that the Trustees would have important powers with regard to the Fund’s primary asset, the voting shares of Standard Holdings, and the voting of those shares. According to the applicant, those powers would be sufficient to conclude that both legal and beneficial ownership and control of the voting shares of Standard Holdings would reside with the Trustees of the Fund and not with the Unitholders of the Fund. The applicant indicated that the restrictions placed on the Trustees are extremely specific and narrowly defined, largely mirroring the governance and minority shareholder protection provisions found in the *Canada Business Corporations Act*, and would not amount to beneficial ownership and control of the voting shares of Standard Holdings. The applicant stated that, because all the Trustees would be “Canadian,” the shareholding requirement of the Direction would be met.
23. This argument would suggest that the Unitholders need not be “Canadian,” a conclusion that requires a careful examination of the powers and roles of each of the Trustees and Unitholders with respect to the voting shares of Standard Holdings. Under the proposed structure, the Trustees would hold the Fund Assets for the use and benefit of the Unitholders, and the Unitholders would have a beneficial interest in the Fund Assets.

Thus, for purposes of the Trust, it is clear that the Unitholders would be the beneficiaries. The rights and obligations of the Trustees and those of the Unitholders are set out in the Declaration, and that agreement must be looked at in its entirety and in context to determine the roles of each with regard to the beneficial ownership and control of the voting shares of Standard Holdings and compliance with the Direction.

24. The Commission notes that, while the Trustees would have important rights, the rights of the Unitholders would also be substantial. Such rights would limit those of the Trustees with regard to the Fund Assets. For example, the Unitholders could pass resolutions that would bind the Fund or the Trustees with respect to certain fundamental matters described in section 12.6 of the Declaration, including the election or removal of one or more Trustees, the election or removal of nominees of the Fund to serve as directors of Standard Holdings, the termination of the Fund, the exercise of certain voting rights attached to the securities of any member of the Fund Group, the sale of all or substantially all of the Fund Assets and the dissolution of the Fund prior to the end of its term.
25. The Trustees' powers would also be subject to other express limitations such as, for example, those described in Section 9.4 of the Declaration, which states that the Trustees may not under any circumstances whatsoever vote the Standard Holdings shares held by the Fund nor permit Standard Holdings to vote any securities of Standard GP or SR Limited Partnership to authorize any transaction, which is adverse to the Unitholders, including the sale of the assets of any member of the Fund Group except in conjunction with an internal reorganization, any amalgamation, the winding-up or dissolution of any member of the Fund Group prior to the end of the term of the Trust. Furthermore, the Trustees would have no power, except with the approval of the Unitholders, to sell or otherwise dispose of the voting shares of Standard Holdings or Standard GP to be held directly or indirectly by the Fund, or substantially all of the Fund Assets.
26. When considering the rights of the Unitholders in their entirety, the Commission is of the view that, under the Direction, the Unitholders would in fact beneficially own and control the voting shares of Standard Holdings and not the Trustees. While the Trustees would have legal ownership of the shares and, subject to the limitations described in the Declaration, would have the power and control over the Fund Assets to the same extent as if the Trustees were the sole and absolute beneficial owners of the assets, the stated status of the Unitholders as beneficiaries of the Fund and the substantial rights reserved to the Unitholders (e.g. the power to block any sale of the shares, the power to nominate and remove the Trustees and the directors of Standard Holdings and, most importantly, the power to terminate the Fund and require the distribution of the Standard Holdings voting shares to the Unitholders pro rata) indicate that it would be the Unitholders who would ultimately have indirectly, the beneficial ownership and control of the voting shares for the purposes of the Direction.
27. The Direction specifically contemplates the ownership and control of voting shares through a trust, and there is nothing in the terms of the Declaration to indicate that it is not of a type contemplated by the Direction. Bearing in mind the purposes of the

Direction, the Commission is of the view that it would be remarkable were the Direction to allow those who have rights over shares such as those the Unitholders would have over the voting shares of Standard Holdings, to not be considered the beneficial owners of those shares.

28. The Commission therefore finds that in order for Standard Holdings to meet the Direction, at least 80% of its voting shares must be beneficially owned and controlled by Canadians. This would require that at least 80% of the Fund's units be owned by Canadian Unitholders. With this requirement and the requirement found in the Declaration that the Trustees must be "Canadian" pursuant to the Declaration, the Commission is satisfied that Standard Holdings and Standard GP will both be "Canadian" for the purposes of the Direction.
29. The Commission notes that other arguments could be raised to the effect that the control the Unitholders could exercise over the licensees is "control" for the purposes of Section 3 of the Direction, but, in light of the findings above, these need not be addressed.

Conclusion

30. For all the reasons set out above, the Commission **approves, subject to the following filing requirements**, the application by Standard Radio Inc. (Standard), on behalf of a limited partnership to be established (SR Limited Partnership), to implement an intra-corporate reorganization involving the broadcasting undertakings of Standard.
31. Upon surrender of the current licences issued to Standard, the Commission will issue new broadcasting licences to Standard Radio GP Inc., the general partner, as well as to Standard Radio Holdings Inc. and Standard Radio Inc., the limited partners, to carry on business as SR Limited Partnership.

Filing requirements

32. This decision is based on the understanding that the term sheets filed with the Commission are consistent with the final executed documents to be filed.
33. This authority will only be effective when the Commission receives the following documentation establishing to its satisfaction that the corporate reorganization described in this decision has been completed as approved.
 - Executed incorporating documents (articles and by-laws) for Standard Radio GP Inc. and Standard Radio Holdings Inc.
 - Final composition of the board of directors of Standard Radio Inc., Standard Radio GP Inc. and Standard Radio Holdings Inc.
 - Final share capital and equity structures for SR Limited Partnership, Standard Radio GP Inc., Standard Radio Holdings Inc. and Standard Radio Income Fund (units).
 - Final composition of the board of trustees of Standard Radio Income Fund

- A description of the monitoring mechanism to be put in place to monitor the issuance of Fund Units.
- An amendment to the Declaration reflecting that no less than 80% of the Unitholders are Canadian pursuant to the *Direction to the CRTC (Ineligibility of non-Canadians)*.
- Executed and signed version of:
 - i) the Unanimous Shareholders Agreement for Standard Radio GP Inc.
 - ii) SR Limited Partnership Agreement
 - iii) the Investment Agreement
 - iv) the Exchange Agreement
 - v) the Credit Agreement
 - vi) the Underwriting Agreement

34. The new licensees are reminded of the various conditions of licence and programming commitments to which each licence is subject and notes that the continued operation of these stations will be based on the same terms and conditions as currently in place. The new licensees are also reminded that any outstanding benefits or other unfulfilled expenditures currently in place are to become the responsibility of the new licensees.

35. In the case of its radio licences, the Commission reminds the new licensees that they must fulfill any specific programming commitments and conditions of licence as well as any outstanding requirements related to the development of Canadian talent. In the case of its television licences, the Commission reminds the new licensees of the importance of their local programming commitments as well as commitments to providing closed captioning for all news programs by not later than 1 September 2009.

Secretary General

This decision is to be appended to each licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2006-566

List of Standard Radio Inc. broadcasting undertakings holding a broadcasting licence

Radio station	Location
Quebec	
CJFM-FM and CJFM-FM-DR-1	Montréal
CHOM-FM and CHOM-DR-1	Montréal
CJAD and CJAD-DR-2	Montréal
Ontario	
CJEZ-FM and CJEZ-DR-1	Toronto
CKFM-FM and CKFM-DR-1	Toronto
CFRB and CFRB-DR-2	Toronto
CKQB-FM and CKQB-DR-1	Ottawa
CKLH-FM	Hamilton
CKOC	Hamilton
CHAM	Hamilton
CIQM-FM	London
CJBX-FM	London
CJBK	London
CKSL	London
CHRE-FM	St. Catharines
CHTZ-FM	St. Catharines
CKTB	St. Catharines
CHVR-FM	Pembroke
Manitoba	
CKMM-FM	Winnipeg
CFQX-FM	Selkirk
CKX-FM	Brandon
CKXA-FM	Brandon

Alberta	
CJAY-FM	Calgary
CIBK-FM	Calgary
CKMX	Calgary
CFMG-FM	St. Albert
CFBR-FM	Edmonton
CFRN	Edmonton
British Columbia	
CKZZ-FM	Vancouver
CISL	Richmond
CKOR	Penticton
CIOR	Princeton
CJMG-FM	Penticton
CHOR	Summerland
CJOR	Osoyoos
CKGR	Golden
CHSU-FM	Kelowna
CKFR	Kelowna
CKCR	Revelstoke
CKXR flip FM	Salmon Arm
CICF-FM	Vernon
CKKC flip FM	Nelson
CJAT-FM	Trail
CFTK	Terrace
CJFW-FM	Terrace
CKTK-FM	Kitimat
CHTK	Prince Rupert
CJDC	Dawson Creek
CKRX-FM	Fort Nelson
CHRX-FM	Fort St. John
CKNL-FM	Fort St. John

Networks
Fort St. John, British Columbia
Penticton, British Columbia
Montréal, Quebec

Television station	Location
CFTK-TV	Terrace, British Columbia
CJDC-TV	Dawson Creek, British Columbia