



Broadcasting Decision CRTC 2015-397

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Reference: 2015-201

Ottawa, 25 August 2015

Neeti P. Ray, on behalf of a corporation to be incorporated
Montréal, Quebec

Application 2015-0251-8, received 11 March 2015

Public hearing in the National Capital Region

22 July 2015

CKIN-FM Montréal – Acquisition of assets

*The Commission **approves** an application by Neeti P. Ray, on behalf of a corporation to be incorporated, for authority to acquire the assets of the commercial ethnic radio station CKIN-FM Montréal and for a new broadcasting licence to continue the operation of the undertaking.*

The Commission finds that the transaction serves the public interest and furthers the achievement of the objectives set out in the Broadcasting Act with respect to the Canadian broadcasting system.

As a result of the tangible benefits arising from this transaction, a total of \$41,430 over the next seven years will flow to initiatives that will provide Canadians with a range of programming choices and Canadian creators with more opportunities to showcase their talent.

Application

1. Neeti P. Ray, on behalf of a corporation to be incorporated (OBCI), filed an application for authority to acquire the assets of the commercial ethnic radio station CKIN-FM Montréal from Group CHCR Inc. The applicant also requested a new broadcasting licence in order to continue the operation of the station under the same terms and conditions as those in effect under the current licence.
2. Neeti P. Ray (OBCI) will be a corporation solely owned by The Neeti P. Ray Family Trust and will ultimately be controlled by Mr. Neeti P. Ray in his capacity as the sole trustee.
3. As a result of the transaction, Neeti P. Ray (OBCI) would become the licensee of CKIN-FM.

4. Through his family trust, Neeti P. Ray currently controls two other ethnic radio stations, CINA Mississauga and CINA-FM Windsor.

Intervention and applicant's reply

5. The Commission received a comment from Radio Humsafar Inc. (Humsafar). Humsafar received approval in 2014 for a licence to operate a commercial ethnic AM radio station in Montréal targeting primarily the South Asian community (see Broadcasting Decision 2014-241). The station is not yet in operation.
6. Humsafar did not oppose the purchase of CKIN-FM by Neeti P. Ray (OBCI). However, Humsafar noted the applicant's plans to maintain CKIN-FM's particular focus on programming directed to South Asian communities and expressed concern that this focus would make it difficult for its AM station to establish its presence in the market upon launching. Humsafar requested that the Commission restrict the ethnic programming provided by CKIN-FM to the communities (Hispanic, Haitian, Romanian, Arab-speaking, Vietnamese and French-African) it had originally intended to serve when licensed in 2007.
7. In reply, Neeti P. Ray (OBCI) noted that the Commission acknowledged the considerable South Asian programming provided by CKIN-FM and endorsed its existing programming mix to meet the needs of the Montréal market in its last licence renewal in Broadcasting Decision 2013-691.

Regulatory framework

8. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act* (the 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 associated with the transaction are commensurate with its size and nature and that the application represents the best possible proposal under the circumstances.
9. 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 of the Act.

Public interest

10. The public interest is reflected in the numerous objectives of the Act, including the Canadian broadcasting policy set out in section 3(1) of the Act. In the context of its examination of this transaction, the Commission has paid particular attention to the following objectives of the Canadian broadcasting policy set out in section 3(1)(i):

the programming provided by the Canadian broadcasting system should

- (i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,
- (ii) be drawn from local, regional, national and international sources,
- (iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.

Commission's analysis and decision

11. The transaction will have a positive impact on the diversity of voices in Canada as the synergies that will result from the transaction will allow Neeti P. Ray (OBCI), an independent broadcaster, to solidify its financial situation. Moreover, the transaction will contribute to the vitality and competitiveness of Montréal's ethnic radio market by:

- introducing a financially robust independent broadcaster with considerable experience in South Asian and ethnic programming to the market;
- allowing the two ethnic radio undertakings currently owned by Group CHCR Inc. to redress their financial situations; and
- permitting CKIN-FM to create additional value and potential for advertisers seeking to target Montréal's South Asian community.

12. Further, Neeti P. Ray (OBCI) has committed to continue to provide a local service that focuses on the ethnic third-language groups CKIN-FM currently serves, thus enhancing the service and providing quality ethnic programming for both listeners and advertisers, consistent with section 3(1)(i)(i) of the Act.

13. In light of the above, the Commission finds that this transaction serves the public interest as it will benefit both Canadians and the broadcasting system and furthers the achievement of the objectives of the Act.

14. The Commission's decision that the proposed transaction, with the change to the value of the transaction discussed further below, is in the public interest is based on an assessment of the transaction in light of the regulatory framework set out above. In examining the proposed transaction and the interventions received, the Commission also focused on the following issues:

- whether the request that CKIN-FM's ethnic programming orientation be limited to certain communities is warranted under the circumstances;
- whether the calculation of the value of the transaction is appropriate and consistent with general Commission practices and policies;

- whether the proposed tangible benefits package is consistent with general Commission practices and policies; and
- whether the length of the licence term should be reduced due to past non-compliances regarding Canadian content development (CCD) contributions.

CKIN-FM's ethnic programming orientation

15. The Commission's current practice in establishing conditions of licence for commercial ethnic radio stations is to indicate the number of cultural groups and languages to be served, without imposing conditions regarding service to specific ethnic communities or languages.
16. As set out in Broadcasting Decision 2013-691, CKIN-FM's condition of licence to this effect requires it to broadcast programming directed to at least six cultural groups in at least eight languages in each broadcast week. As such, as long as CKIN-FM is respecting its conditions of licence, it has the flexibility to provide programming to the communities and in the languages of its choosing.
17. Further, CKIN-FM's focus on the South Asian communities predates the Commission's issuance of a licence to Humsafar and Humsafar had full knowledge of CKIN-FM's programming orientation prior to submitting its application for an AM licence targeting Montréal's South Asian community.
18. In light of the above, the Commission does not consider it appropriate to limit CKIN-FM's ethnic programming orientation to certain communities as requested by the intervener.

Value of the transaction

19. Because the Commission does not solicit competing applications for authority to transfer the ownership or control of radio, television and other programming undertakings, the onus is on the applicant to demonstrate that the benefits proposed in the application are commensurate with the size and nature of the transaction.
20. Pursuant to the asset purchase and sale agreement, the applicant would purchase the assets of CKIN-FM for \$500,000. The applicant also included in the proposed value of the transaction the value of a lease commitment for an antenna (\$22,500) and a consulting services contract (\$18,000) for a total value of \$540,500.
21. In addition, the purchase and sale agreement provides the purchaser with an option to share the vendor's studio and office space for a period up to 12 months after closing of the transaction for 50% of the rent and related cost. The purchaser can terminate the option with one-month notice. In accordance with the revised method set out in Broadcasting Regulatory Policy 2014-459, the Commission calculates the value of real estate or leases for buildings, studios, offices and transmission facilities over a

five-year period. In this case, the value for office and studio space over a five-year period amounts to \$150,000 (\$2,500/month x 60 months).

22. Accordingly, the Commission determines that the revised value of the transaction amounts to \$690,500, as set out below:

Purchase price	\$500,000
Lease commitment – Antenna	\$22,500
Lease commitment – Office space	\$150,000
Transitional services contract	\$18,000
Value of the transaction	\$690,500

Proposed tangible benefits package

23. Consistent with the Commission’s tangible benefits policy for radio set out in Broadcasting Public Notice 2006-158, the applicant proposed a tangible benefits package equal to 6% (\$32,430) of the proposed value of the transaction (\$540,500).
24. Based on the revised value of the transaction, the value of the proposed tangible benefits package will increase from the proposed \$32,430 to \$41,430 (6% of \$690,500).
25. In accordance with Broadcasting Regulatory Policy 2014-459 and in consideration of the revised value of the transaction, the Commission **directs** Neeti P. Ray (OBCI) to allocate its tangible benefits contribution amounting to \$41,430 over seven consecutive broadcast years as follows:
- 3% (\$20,715) to the Radio Starmaker Fund or Fonds Radiostar;
 - 1.5% (\$10,357) to FACTOR or MUSICACTION;
 - 1% (\$6,905) to any eligible CCD initiative at the discretion of the purchaser; and
 - 0.5% (\$3,452) to the Community Radio Fund of Canada.

Apparent non-compliance and length of the licence term

26. 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 evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The circumstances, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.

27. The broadcasting licence for CKIN-FM was renewed in Broadcasting Decision 2013-691 for a short term (from 1 January 2014 to 31 August 2017) due to past non-compliance regarding CCD. Further, in the current licence term, CKIN-FM appears to have failed to comply with section 9(2) of the *Radio Regulations, 1986* regarding the filing of annual returns by filing its annual return for the 2013-2014 broadcast year three weeks after the 30 November deadline.
28. Under the circumstances, the Commission considers it appropriate to retain the current licence expiry date of 31 August 2017. This will allow for an earlier review of the licensee's compliance with its conditions of licence and regulatory requirements.

Conclusion

29. In light of all of the above and subject to the terms set out in the appendix to this decision, the Commission **approves** the application by Neeti P. Ray, on behalf of a corporation to be incorporated, for authority to acquire the assets of the commercial ethnic radio programming undertaking CKIN-FM Montréal from Group CHCR Inc.
30. Upon surrender of the current licence issued to Group CHCR Inc. and once the applicant has satisfied the Commission with supporting documentation that an eligible Canadian corporation has been incorporated in accordance with the application in all material respects, the Commission will issue a new broadcasting licence expiring 31 August 2017 to Neeti P. Ray, on behalf of a corporation to be incorporated.

Secretary General

Related documents

- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Commercial ethnic radio stations in Montréal*, Broadcasting Decision CRTC 2014-241, 16 May 2014
- *CKDG-FM and CKIN-FM Montréal – Licence renewals*, Broadcasting Decision CRTC 2013-691, 13 December 2013
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

**This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2015-397

Terms and conditions of licence and encouragement for the commercial ethnic radio programming undertaking CKIN-FM Montréal

Terms

A licence will be issued once the applicant has satisfied the Commission with supporting documentation that an eligible Canadian corporation has been incorporated in accordance with the application in all material respects.

The licence will expire 31 August 2017.

Conditions of licence

1. The licence will be subject to the conditions set out in *Conditions of licence for AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, except for conditions of licence 7 and 9, as well as to the conditions set out in the licence issued for the undertaking.
2. The station shall be operated within the specialty format as defined in *A review of certain matters concerning radio*, Public Notice CRTC 1995-60, 21 April 1995, and *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy 2010-819, 5 November 2010.
3. The licensee shall devote at least 70% of the programming broadcast during each broadcast week to ethnic programs, as defined in the *Radio Regulations, 1986*.
4. The licensee shall devote at least 60% of the programming broadcast during each broadcast week to third language programs, as defined in the *Radio Regulations, 1986*, as amended from time to time.
5. The licensee shall broadcast programming directed to at least six cultural groups in at least eight languages in each broadcast week.
6. The licensee shall ensure that at least 10% of the music selections broadcast during ethnic programming periods in each broadcast week are Canadian selections.

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 the management of its human resources.