



Broadcasting Decision CRTC 2016-488

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Reference: 2016-392

Ottawa, 20 December 2016

8946337 Canada Limited and Blue Ant Media Solutions Inc., partners in a general partnership carrying on business as Blue Ant Television General Partnership

Across Canada

Application 2016-0652-6, received 24 June 2016

Public hearing in the National Capital Region

7 December 2016

Smithsonian Channel – Acquisition of assets (corporate reorganization)

1. The Commission **approves** the application by 8946337 Canada Limited and Blue Ant Media Solutions Inc., partners in a general partnership carrying on business as Blue Ant Television General Partnership (Blue Ant Television GP), and Mr. Michael MacMillan, on behalf of a corporation to be incorporated to be known as Newco, partners in a general partnership carrying on business as the Smithsonian Channel General Partnership (SCGP), for authority to acquire from Blue Ant Television GP, as part of a corporate reorganization, the assets of the national specialty Category B service Smithsonian Channel (formerly EQHD), as well as for a new broadcasting licence to continue the operation of the undertaking under the same terms and conditions as those in effect under the current licence. The Commission did not receive any interventions regarding this application.
2. The ultimate control of Blue Ant Television GP is exercised by Mr. MacMillan by way of the special shares he holds and the powers attached to these shares in accordance with Blue Ant Media Inc.'s unanimous shareholders' agreement.
3. The reorganization will take place in the following three steps:
 - i) the creation of Newco, which will be owned by Blue Ant Television GP (80%) and SNI/SI Networks L.L.C., a non-Canadian (20%);
 - ii) the formation of SCGP through Newco entering into a partnership with Blue Ant Television GP, such that Blue Ant Television GP will hold 66.66% of the partnership units in SCGP and Newco will hold 33.34%; and
 - iii) the transfer of the assets of Smithsonian Channel from Blue Ant Television GP to SCGP.

4. Following completion of the transaction, the partners of SCGP will become the licensee of Smithsonian Channel. The transaction will not affect the effective control of the undertaking, which will continue to be exercised by Mr. MacMillan.
5. When assessing a corporate reorganization, the Commission must ensure that there is no change to the effective control of the licensed undertaking. Furthermore, pursuant to the *Direction to the CRTC (Ineligibility of Non-Canadians)* (the Direction), issued by the Governor in Council under subsection 26(1) of the *Broadcasting Act*, no broadcasting licence may be issued, and no amendment or renewals thereof may be granted, to an applicant that is non-Canadian. A non-Canadian is a person or entity that is not a Canadian. A Canadian includes a qualified corporation.
6. The Direction defines a qualified corporation as follows:

“qualified corporation” means a corporation incorporated or continued under the laws of Canada or a province, where

- (c) in the case of a corporation that is a subsidiary corporation,
 - (i) the parent corporation is incorporated or continued under the laws of Canada or a province,
 - (ii) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than $66 \frac{2}{3}$ per cent of all of the issued and outstanding voting shares of the parent corporation and not less than $66 \frac{2}{3}$ per cent of the votes, and
 - (iii) the parent corporation or its directors do not exercise control or influence over any programming decisions of the subsidiary corporation where:
 - (A) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, less than 80 per cent of the issued and outstanding voting shares of the parent corporation and less than 80 per cent of the votes,
 - (B) the chief executive officer of the parent corporation or, where the parent corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer is a non-Canadian, or
 - (C) less than 80 per cent of the directors of the parent corporation are Canadian.
7. As noted above, SNI/SI Networks L.L.C. will hold 20% of the voting shares of Newco, whereas Blue Ant Television GP will hold the remaining 80%. The chief executive officer of Newco will be Mr. Raja Khanna, a Canadian within the meaning of the Direction. Finally, pursuant to Newco’s shareholder agreement, Blue Ant

Television GP will have the right to nominate four of the five directors on Newco's board of directors. Further, as per that agreement, these four directors must be Canadians within the meaning of the Direction. Accordingly, Newco is a qualified corporation under the Direction.

8. In regard to the parent corporation of Newco, Blue Ant Television GP is incorporated under the laws of Canada and is controlled by Mr. MacMillan. Effective control of the licensee will therefore be exercised by Mr. MacMillan, and the partners of SCGP will be considered Canadian within the meaning of the Direction.
9. The Commission has therefore determined that the licensees will be Canadian within the meaning of the Direction and that there will be no change in effective control of the licensee.
10. Upon surrender of the current licence issued to Blue Ant Television GP, the Commission will issue a new broadcasting licence to SCGP expiring 31 August 2018, the current licence expiry date, to continue the operation of the undertaking under the same terms and **conditions** as those in effect under the current licence.
11. Blue Ant Television GP must inform the Commission once the corporate reorganization has been completed. Further, the Commission directs Blue Ant Television GP to file, within 30 days of the date of this decision, executed copies of all corporate documents (including but not limited to partnership agreements, partnership registrations, certificates and articles of incorporation, bylaws, shareholder agreements, and certificates and articles of amalgamation).

Employment equity

12. 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

This decision is to be appended to the licence.