



Broadcasting Decision CRTC 2017-114

PDF version

Reference: 2016-468

Ottawa, 26 April 2017

Sirius XM Canada Holdings Inc., on behalf of Sirius XM Canada Inc.
Across Canada

Application 2016-0539-6, received 27 May 2016

Sirius Canada and XM Canada – Transfer of shares

*The Commission **approves**, subject to certain **conditions** and modifications, an application by Sirius XM Canada Holdings Inc., on behalf of Sirius XM Canada Inc. (Sirius XM Canada), licensee of the satellite subscription radio services Sirius Canada and XM Canada, for authority to effect a change in its ownership structure.*

The Commission reviewed the proposed transaction and considers that it will result in a change of effective control, which therefore triggers the payment of tangible benefits.

*As a result of the tangible benefits arising from this transaction, Sirius XM Canada will invest **\$28.7 million** on initiatives that will benefit the Canadian broadcasting system.*

The Commission considers the transaction to be in the public interest. The transaction will ensure the sustainability of satellite radio in Canada for the foreseeable future and Canadian consumers will continue to benefit from the service as well as from future service enhancements.

Sirius XM Canada incurred a shortfall in its annual contribution to Canadian content development for the 2013-2014 broadcast year. While the Commission approves the current application, subject to the satisfaction of the conditions of approval set out in this decision, approval of the present transaction will take effect when the Commission receives proof of payment for the shortfall amount.

Application

1. Sirius XM Canada Holdings Inc. (Holdco), on behalf of Sirius XM Canada Inc. (Sirius XM Canada), filed an application for authority to effect a change in its ownership structure.
2. Sirius XM Canada is the licensee of the satellite subscription radio services Sirius Canada and XM Canada and is the sole provider of satellite radio services in Canada.

3. The proposed transaction would be implemented by way of a court-approved plan of arrangement and would result in Holdco, the parent corporation of the licensee, ceasing to be a publicly traded corporation. The plan of arrangement would, in turn, be implemented in three steps:

Step 1

A new Canadian corporation, 2517835 Ontario Inc. (2517835 Ontario), would be capitalized by Obelysk Media Inc. (Obelysk) (33.5%) and Slaughter Communications Inc. (Slaughter) (33.5%), being the two continuing Canadian shareholders, and by Sirius XM Radio, Inc. (Sirius US) (33%), a non-Canadian entity pursuant to the *Direction to the CRTC (Ineligibility of Non-Canadians)* (the Direction).¹

Step 2

2517835 Ontario would acquire all the outstanding shares of Holdco.

Step 3

Lastly, 2517835 Ontario would amalgamate with Holdco and continue under Holdco.

4. Following the proposed transaction, Sirius XM Canada would remain a wholly owned subsidiary of Holdco. Sirius XM Canada would continue to operate the undertakings under the same terms and conditions as those in effect under the current licence.
5. The applicant stated that the purchase price for the proposed transaction would be set at approximately \$236.4 million. The applicant did not propose a tangible benefits package based on its position that the proposed transaction would not result in a change of effective control.

Interventions and reply

6. The Commission received interventions in support of the application as well as two comments. The applicant replied to the interventions and comments. The public record for this application can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.
7. The Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) suggested that any tangible benefits imposed as a result of the transaction be equally distributed between English-language and French-language initiatives. For its part, Kosiner Venture Capital Inc. (Kosiner), licensee of an unlaunched national pay audio programming service, raised concerns regarding potential issues over the licensee's compliance with regulatory obligations.

¹ SOR/97-192

8. In its reply, the applicant indicated that the issues raised by ADISQ relating to tangible benefits are not relevant to this proceeding since, in its view, no tangible benefits are payable. In regards to the allegation of non-compliance raised by Kosiner, the applicant stated that the intervention is outside of the scope of this proceeding and should therefore be dismissed.

Background on the licensing of satellite radio

9. In Broadcasting Public Notice 2005-61 (the Satellite Radio Policy), the Commission introduced a framework for the licensing of satellite radio in Canada. The Commission indicated that the introduction of satellite subscription radio into Canada would contribute substantially to the fulfilment of policy objectives of the *Broadcasting Act* (the Act) in a number of ways, including:
- increasing the diversity and comprehensiveness of programming choices available to Canadians;
 - covering the entire country, bringing new services to rural and remote areas where radio options are often quite limited;
 - increasing exposure and monetary support to Canadian musicians, particularly new and emerging artists; and
 - offering Canadian radio listeners multi-channel services in their cars and other vehicles, using a proven technology that is being deployed south of the border.
10. In the Satellite Radio Policy, the Commission noted that, given that Canada has no satellite facility capable of distributing digital satellite radio broadcasting and is unlikely to have such a facility in the future, satellite subscription radio services would not be available in Canada via satellite facilities that are owned and operated by Canadians.
11. Since programming would not originate from Canadian satellites, the Commission recognized that there would be limited bandwidth on the U.S.-owned satellites for Canadian programming. To offset the low amount of Canadian content distributed by the Canadian satellite radio providers and their use of non-Canadian broadcasting facilities, the Commission put in place requirements for the creation of original Canadian-produced channels and required satellite radio services to contribute 5% of their gross annual revenues to what is now called Canadian content development (CCD). In the Satellite Radio Policy, the Commission also stated that it will require, by condition of licence, each licensee to allocate 50% of its annual CCD contribution to English-language initiatives and 50% to French-language initiatives.

Regulatory framework

12. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under 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 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.

13. 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 section 3(1) of the Act.
14. Pursuant to section 5(1) of the Act, the Commission's mandate is to regulate and supervise all aspects of the Canadian broadcasting system in the public interest. The review of ownership transactions in the public interest forms part of the Commission's regulatory and supervisory mandate under the Act.
15. Section 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.

Commission's analysis and decisions

16. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:
 - whether the transaction would result in a change in ownership and effective control and, if so, who would exercise *de facto* control over the proposed entity after the transaction;
 - whether the proposed ownership structure is in compliance with the Direction;
 - whether the transaction is in the public interest; and
 - whether tangible benefits are payable with respect to this transaction, and if so, what is the value of the transaction.

Change of ownership and control

17. Holdco stated in its application that, notwithstanding the proposed changes to the shareholding structure of the organization, the transaction should be viewed as a corporate reorganization with no impact on the effective control of Sirius XM Canada, as effective control of Sirius XM Canada and of Holdco would remain with the Board of Directors (the Board) of Holdco after the transaction.
18. In Broadcasting Decision 2014-421, the Commission approved a change in ownership involving CHCH-DT, a licensee controlled by its holding company's Board of Directors. In that decision, the Commission determined that the departure of one of the minority shareholders and a change to the voting shares owned by the remaining shareholders with no new shareholder acquiring shares did not result in a change in effective control.

19. However, in the current instance, the proposed transaction involves a series of significant changes to the ownership structure of Holdco:

- the proposed transaction would have the effect of taking Holdco private, meaning that there would no longer be a public float;
- one of the larger Canadian shareholders, the Canadian Broadcasting Corporation (CBC) (9.63%²) is exiting the company;
- Sirius US would see its equity interest increase from 36.77% to 70%; and
- overall, the number of shareholders of Holdco would decrease from six to three.

20. Furthermore, the constitution of its Board and the mechanisms for nominating board members would also change. As per the current governance agreements, Holdco's existing shareholders may nominate nine board members to the Board, of which three are independent. The right of shareholders to nominate board members is established on the basis of voting interest. Shareholders who own a 10% voting interest in Holdco can nominate two members to the Board.

21. Following the transaction, the number of board members would be reduced from nine to five, of which only one would be independent. The ability to nominate board members would no longer be based on a shareholder's voting interest, but would instead be based on a specific right granted to each individual shareholder in the Unanimous Shareholders Agreement (USA). Specifically, article 3.1 of the USA stipulates that Obelysk and Slaight would each nominate one board member while Sirius US would nominate two board members, which would increase Sirius US's presence on the Board.

22. Further, the voting interests of the remaining shareholders would also change: those of Sirius US would increase from 24.85% to 33%; Slaight from 19.31% to 33.5%; Obelysk from 17.08% to 33.5%.

23. In light of the above, the Commission determines that the proposed transaction would result in a change of effective control.

Assessment of legal control and control in fact

Legal control

24. The proposed transaction would result in Canadian shareholders Obelysk and Slaight each holding 33.5% of the voting shares of Holdco, whereas Sirius US would hold 33%. Since no single shareholder would hold a majority of Holdco's voting shares, no shareholder would have legal control of the licensee or Holdco.

² According to the shareholders voting rights provided in *Notice of special meeting of shareholders to be held August 30, 2016 and management information circular*, dated 29 July 2016.

25. Article 2.4 of the USA stipulates that the Board shall be responsible for the affairs of the enterprise in the normal course of business. **Therefore, following the proposed transaction, legal control of the licensee would be vested in Holdco's Board of Directors.**

Control in fact

26. The Commission considers that the appropriate test for assessing control in fact is set out in Decision No. [297-A-1993](#) of the National Transportation Agency (now known as the Canadian Transportation Agency):

There is no one standard definition of control in fact but generally, it can be viewed as the ongoing power or ability, whether exercised or not, to determine or decide the strategic decision-making activities of an enterprise. It can also be viewed as the ability to manage and run the day-to-day operations of an enterprise. Minority shareholders and their designated directors normally have the ability to influence a company as do others such as bankers and employees. The influence, which can be exercised either positively or negatively by way of veto rights, needs to be dominant or determining, however, for it to translate into control in fact.

27. For this transaction, the Commission must therefore assess the influence of the non-Canadian shareholder, as the owner of the satellite facilities, as well as the corporate governance agreements to determine control in fact of the licensee.

Ownership and control of satellite broadcasting facilities by the non-Canadian shareholder

28. In the Satellite Radio Policy, the Commission recognized that satellite radio services would not be available in Canada without recourse to content and facilities provided by non-Canadians. Because Sirius US owns the satellite facilities and provides access to the vast majority of the content agreements that are used by the licensee to offer services in Canada, a considerable degree of influence would necessarily be exercised by Sirius US.
29. Under the current arrangement, the use of the U.S.-owned satellite facilities and content by the licensee is guided by the terms of technical and licensing agreements with Sirius US. Some of these agreements begin to expire in 2017.
30. Under the proposed transaction, agreements that currently govern access to the satellite facilities and content would be replaced by services and advisory services agreements for a 30-year period. These new agreements would grant the licensee access to Sirius US next-generation satellite infrastructure, service enhancements and content.
31. In this regard, the applicant indicated that Sirius US requires a greater amount of economic incentive to continue to grant this access to the licensee and that the licensee would participate in the capital expenditures via an increase to the monthly fee under the new agreements.

32. Article 13.01 of the proposed Services Agreement states that the Services Agreement shall be renewable at the sole option of Sirius US for a term not exceeding the original term of the agreement. As drafted, this clause could be considered as excessively binding on the licensee as it could be interpreted as giving Sirius US the exclusive rights to renew the agreement. In response to a Commission staff question, Holdco indicated that it would amend the agreement to clarify that it can be renewed at the request of Holdco and with the agreement of Sirius US.
33. Therefore, the Commission **directs** the applicant to modify article 13.01 of the Services Agreement to clarify that the agreement can be renewed at the request of Holdco and with the agreement of Sirius US.

Corporate governance

34. The proposed transaction would result in a transition from the current governance agreements to the USA. A large portion of the consent rights in the proposed USA have either been carried over or are similar in nature to those of the current governance agreements, which were previously approved by the Commission in Broadcasting Decision 2011-240, related to the merger of Canadian Satellite Radio Inc. and Sirius Canada Inc.
35. To determine if effective control remains with the Board, the Commission examined the implications of certain key governance provisions under the proposed USA.
36. As previously indicated, the proposed USA would introduce changes to the structure of the Board and to the procedures for nominating board members. The new Board would be comprised of five members: two nominated by Sirius US, one each from the Canadian shareholders, plus one independent member.
37. Under article 3.1(f) of the proposed USA, the nomination of the independent Canadian board member shall be the responsibility of the board nominees of the shareholders. As drafted, no tiebreaking mechanism was written into the nomination rules for the independent board member. This could provide Sirius US, by virtue of the fact that it can nominate two board members under the terms of the USA versus one each for the Canadian shareholders, with a *quasi*-right of veto over the nomination of the independent board member.
38. In a reply to Commission staff, the applicant agreed to amend the USA to provide that in the event of a tie among the four non-independent members, the two Canadian nominees shall nominate the independent board member. Moreover, in the event that the Slight nominee and the Obelysk nominee would be unable to agree on that nomination, the Slight nominee would nominate the independent board member in years ending in an even number, and the Obelysk nominee would nominate this board member in years ending in an odd number.

39. The Commission is satisfied that the tiebreaking mechanism proposed by Holdco alleviates concerns over Sirius US's influence over the nomination of the independent board member. The Commission **directs** the applicant to amend article 3.1(f) of the USA in the manner set out above.
40. The Commission reviewed the quorum provisions and is satisfied that they will ensure sufficient Canadian representation in Board decision matters.
41. With respect to provisions relating to approval of the annual budget and business plan, article 3.5 of the USA stipulates that, in the event of a 10% discrepancy in operating expenditures, capital expenditures or revenues of Holdco, a minimum of one of two board members nominated by Sirius US to the Board, or in the absence of such board members, the shareholder itself, must approve the annual budget and business plan. The applicant stated that a 10% fluctuation represents double the annual rate of growth of Holdco and that this protection amounts to a standard clause designed to protect minority investors.
42. Commission staff asked the applicant to confirm that the 10% fluctuation was relative to the results of the previous year. The applicant confirmed and agreed to submit revised wording to this effect. The Commission reviewed the threshold against the historical financial performance and is satisfied that it would provide sufficient flexibility to the Board to formulate a business plan that reflects the normal course of business. Accordingly, the Commission **directs** the applicant to amend article 3.5 of the USA with the revised wording.
43. Relative to the current governance agreements, the special consent rights granted to Sirius US would be amended to include consent relative to the merger, consolidation, sale, transfer, assignment, conveyance disposition to a third party of property or assets of Holdco equal to or greater than 5% of the consolidated enterprise value of Holdco.
44. Although this would similarly allow flexibility for the Board to exercise control of the operations of the licensee in the normal course of business, it does impede its ability to make strategic decisions relative to the assets of the corporation.
45. As a result of the proposed transaction, the powers granted to Holdco's Board of Directors would be limited in regards to its ability to modify the dividend policy, by a series of clauses and special consent rights in the USA that do not exist in the current governance agreements.
46. Sirius US would be granted rights vis-à-vis the dividend policy of Holdco. Article 3.3 stipulates that at least one of the two board members nominated by Sirius US must approve any changes to the dividend policy. Furthermore, if the Board were to approve a change to the dividend policy, article 4.4 stipulates that the Board must obtain the approval of Sirius US to proceed with a change to the dividend policy.
47. Given the proposed equity position of Sirius US, the dividend policy would have a considerable impact on Sirius US. Therefore, the dividend policy as drafted serves to protect Sirius US's equity interest position in light of its minority voting interest.

Although it may not affect the Board's ability to exercise operational control, the dividend policy of a corporation is a matter of financial strategy for which the Board will have relinquished control to Sirius US and the members it nominated to the Board.

48. The Commission recognizes that Holdco's dependence on U.S.-owned satellite infrastructure will always confer a considerable degree of influence to Sirius US on the operations of the Canadian satellite services, Sirius XM Canada and Holdco. However, following careful consideration of the governance provisions proposed as a result of the transaction and, upon modification of articles 3.1(f) and 3.5(b) of the USA to the satisfaction of the Commission, the Commission considers that the new powers granted to the shareholders would not affect the ability of Holdco's Board of Directors to manage the normal course of business. **Therefore, following the proposed transaction, control in fact would be exercised by Holdco's Board of Directors.**

Compliance with the Direction

49. In its review of transactions, the Commission must be satisfied that the licensee is owned and controlled by Canadians as per the requirements set out in the Direction.
50. As determined above, following the proposed transaction, Sirius XM Canada would be effectively controlled by the Board of Directors of Holdco. Both Sirius XM Canada and Holdco are qualified corporations under the Direction, and the CEO of the licensee and its parent company is Canadian.
51. Notwithstanding the above, the Direction stipulates that where licensees are controlled by a parent company with less than 80% Canadian voting shareholders or board members, the parent company cannot exercise any control or influence over any programming decisions of the corporation. In Broadcasting Decision 2011-240, to ensure compliance with the Direction, the Commission required the licensee to introduce an independent programming committee, which is still currently in place.
52. Following the proposed transaction, Canadians would control 67% of the voting shares and rights of Holdco and the Board would be comprised of three Canadian members out of five (60%). An independent programming committee would therefore continue to be required.
53. In regards to the composition of the independent programming committee, Holdco indicated that Mark Redmond, President and CEO of Holdco, would sit on the committee.
54. Consistent with Broadcasting Decision 2013-642 and to ensure that the parent corporation or its directors do not exercise control or influence over any programming decisions, the Commission considers that officers, directors and employees of Holdco are not eligible to be members of the independent programming committee.
55. In response to a Commission staff letter indicating the above, Holdco indicated that it intended to modify by-law no. 2 of the licensee's by-laws to ensure compliance with the Commission's requirements regarding independent programming committees.

56. The Commission considers the proposed transaction meets the eligibility test in accordance with the Direction, provided that Holdco continues to have an independent programming committee and that the composition of the committee conforms with the Direction and is consistent with the Commission's approach to independent programming committees in Broadcasting Decision 2013-642.

57. Accordingly, the Commission **directs** Holdco to have an independent programming committee and to modify by-law no. 2 relating to the composition of the independent programming committee.

Public interest

58. In its assessment of the transaction, the Commission must weigh the importance of the ongoing viability of satellite radio in Canada and the public interest benefits it renders against the increased financial control that the transaction would grant to Sirius US.

59. In the Satellite Radio Policy, the Commission adopted a licensing framework that recognized the uniqueness of satellite radio and took into account the limited bandwidth available on the U.S.-owned satellites for Canadian programming. To offset this, the Commission put in place requirements for Canadian-produced channels and required satellite radio services to make contributions to CCD.

60. The existence and sustainability of Sirius XM Canada is contingent upon access to Sirius US's satellite distribution infrastructure, its content and its next-generation technology. Both the licensee and Sirius US face the similar challenges of increasing competition from both commercial radio and unlicensed competitors for the in-vehicle market. Sirius US is developing technological and strategic solutions that could assist the licensee.

61. However, upon expiry of the current agreements beginning in 2017, Holdco's access to Sirius US satellite infrastructure, content and technical services could be jeopardized. The proposed transaction would thus have the benefit of introducing new agreements that provide this access for a minimum period of 30 years.

62. By virtue of the increased equity position of Sirius US from 37%³ to 70%, as well as the increase in payments required by the licensee to Sirius US, the transaction would result in an increase in the flow of money to Sirius US in the form of dividends and additional payments under the new agreements.

63. However, Sirius XM Canada currently provides service to approximately 2.7 million subscribers in Canada, distributes 140,000 hours of Canadian programming annually and enhances the diversity of choices and the visibility of Canadian content. It also provides significant annual contributions to CCD.

³ According to *Notice of special meeting of shareholders to be held August 30, 2016 and management information circular*, dated 29 July 2016.

64. In the Commission's view, the transaction would ensure the sustainability of satellite radio in Canada for the foreseeable future and would ensure that Canadian consumers continue to benefit from the service as well as from future service enhancements. The Canadian broadcasting system would also continue to benefit from the elements of diversity, coverage and monetary support that the Commission highlighted when it first licensed satellite radio in Canada.

65. In light of the above, the Commission considers that the proposed transaction is in the public interest.

Tangible benefits

66. As set out in the Tangible Benefits Policy (Broadcasting Regulatory Policy 2014-459), the Commission requires that tangible benefits be provided for changes to the effective control of radio and television programming services. For commercial radio services, tangible benefits must generally represent at least 6% of the value of the transaction.

67. In light of the Commission's determination that the proposed transaction would result in a change in effective control, the transaction therefore triggers the payment of tangible benefits. The Commission must determine the value of the transaction to be able to determine the value of the tangible benefits package.

Value of the proposed transaction

68. 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, 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. The Commission's practice is to impose tangible benefits only on the portion of the voting interest being transferred. For the current transaction, based on available information, this represents 38%⁴ of the total issued and outstanding shares.

69. In response to Commission staff letters requesting a value for the proposed transaction as well as a tangible benefits package in the event that one is required, the applicant provided \$236.4 million as the purchase price for the shares acquired. However, the applicant did not propose a tangible benefits package as it was of the view that the transaction would not result in a change of effective control.

70. Consistent with the Tangible Benefits Policy, the purchase price is added to the value of the gross debt, as well as ancillary agreements and any leases assumed by the purchaser for real property and transmission facilities. **Accordingly, the Commission determines the value of the transaction to be \$479 million.**

⁴ According to the shareholders voting rights provided in *Notice of special meeting of shareholders to be held August 30, 2016 and management information circular*, dated 29 July 2016.

Value of the transaction (\$ millions)

Purchase price (Based on the purchase price of the shares acquired)	\$236.4
Ancillary agreements, debt and leases	\$242.6
Value of the transaction	\$479

Value and allocation of the tangible benefits package

71. **Based on the value of the transaction determined above, the value of the tangible benefits package should therefore be \$28.7 million, which represents 6% of the transaction value.**
72. In the Tangible Benefits Policy, the Commission maintained the following allocation formula for ownership transactions involving radio services:
- 3% to Radio Starmaker Fund or Fonds Radiostar;
 - 1.5% to FACTOR or MUSICACTION;
 - 1% to any eligible CCD initiative at the discretion of the purchaser; and
 - 0.5% to the Community Radio Fund of Canada.
73. While the Tangible Benefits Policy mandates payments to specific funds, it doesn't specify a ratio between funds that support French-language or English-language initiatives. In general, for conventional radio, a station's language of broadcast will determine whether a station contributes to FACTOR or MUSICACTION and to Radio Starmaker Fund or Fonds RadioStar. In other words, a radio station will contribute to compulsory funds that correspond with the official language of its programming.
74. At the same time, with respect to annual CCD contributions, which are a similar avenue for contributing to the development of Canadian content, licensees of national pay audio services are required by condition of licence to make equal contributions to the development of Canadian English- and French-language initiatives. This requirement reflects the programming offered by such services in both official languages.
75. In the case of Sirius XM Canada, it must direct a minimum of 45% of its discretionary annual CCD contributions to French-language initiatives and a minimum of 45% to English-language initiatives. Although its condition of licence differs slightly from the Satellite Radio Policy, the basic principle of equal distribution between French- and English-language initiatives remains.

76. In addition to the above, pursuant to section 41(1) of the *Official Languages Act*, the Commission must take positive measures to implement the Act. This means considering the needs and realities of official language minority communities (OLMCs) in its decision-making processes. In the Commission's view, an equal split of the tangible benefits package between English- and French-language funds would serve to recognize the importance and need for the Commission to support OLMC-based artists.
77. Sirius XM Canada is a national audio service that offers programming in both official languages. Therefore, the tangible benefits imposed as part of this proposed transaction should benefit French- and English-language funds. **Based on the CCD framework and licensing decisions for satellite radio and national pay audio services, as well as in recognition of the needs and realities of OLMCs, and the Commission's obligations under section 41(1) of the *Official Languages Act*, the Commission considers it appropriate to mandate equal distribution of non-discretionary contributions between French and English-language funds.**
78. The Commission therefore **directs** the licensee to allocate the non-discretionary portion of the tangible benefits as follows:
- 1.5% to Radio Starmaker Fund;
 - 1.5% to Fonds Radiostar;
 - 0.75% to FACTOR;
 - 0.75% to MUSICACTION; and
 - 0.5% to the Community Radio Fund of Canada.
79. In accordance with the Tangible Benefits Policy, a commercial radio undertaking may allocate a portion of the tangible benefits to eligible CCD initiatives, at the discretion of the purchaser. This discretionary portion represents 1% of the value of the proposed transaction.
80. The applicant did not identify any initiatives to be funded by way of the discretionary portion (\$4.79 million). Consequently, in the absence of a tangible benefits package submitted by the applicant, the Commission considers it appropriate to provide the licensee with the option to allocate the discretionary portion of the tangible benefits to the Broadcasting Participation Fund (BPF). The BPF is an independent fund that helps public interest and consumer groups that represent non-commercial user interests and the public interest to offset the costs of participating in the Commission's broadcasting proceedings.
81. In the Tangible Benefits Policy, the Commission recognized the important role that the BPF plays in helping non-commercial user interests and the public interest to offset the costs of participating in Commission proceedings, and included the BPF within its list of eligible discretionary initiatives for tangible benefits on television. However, the BPF does not limit funding solely to television proceedings and participants to all broadcasting proceedings, including those related to radio, are eligible to receive funding. In this

respect, while the BPF was not explicitly included as an eligible initiative within the radio framework, it does not diminish its relevance or importance as a tool to promote the participation of Canadians in Commission radio proceedings.

82. Directing the remaining \$4.79 million of the tangible benefits package to the BPF would ensure that the voices of Canadians continue to be reflected on the record of broadcasting proceedings in the short and medium term.
83. The Commission generally requires licensees to distribute tangible benefits equally over seven years to help mitigate the concentration of tangible benefits in the final years. However, in this instance, the Commission considers that if the contribution was to be paid out in two equal payments in the first two years, it would provide the BPF the necessary flexibility to effectively manage its operations.
84. Therefore, in the absence of a proposed benefits package, the Commission is providing the applicant with the option to direct the 1% discretionary portion of the tangible benefits package to the BPF, thereby removing the need for further process. Alternatively, the applicant may submit its own proposal for the discretionary portion of the tangible benefits for approval by the Commission. Should the applicant opt to submit its own proposal, no amount of the tangible benefits can be allocated to the licensee's staff.
85. Accordingly, with respect to the discretionary initiatives, the Commission **directs** the applicant, by **26 May 2017**, to either:
 - provide written acceptance of the Commission's proposed allocation of the discretionary portion to the Broadcasting Participation Fund (paid in two equal installments in year 1 and 2); or
 - submit, for the Commission's approval, a proposal for the discretionary portion of the tangible benefits.

Conclusion

86. In light of all of the above, the Commission **approves**, subject to certain **conditions** and modifications, the application by Sirius XM Canada Holdings Inc., on behalf of Sirius XM Canada Inc., for authority to effect a change in its ownership structure. Approval of the transaction is subject to the following **conditions of approval**:
 - The Commission **directs** the applicant to submit executed copies of the following documents by **26 May 2017**:
 - the licensee's by-laws with by-law no. 2 amended to the Commission's satisfaction as well as a revised list of the members of the independent programming committee that is consistent with the *Direction to the CRTC (Ineligibility of Non-Canadians)* and the Commission's approach to independent programming committees in Broadcasting Decision 2013-642;

- the Unanimous Shareholders Agreement with articles 3.1(f) and 3.5(b) amended to the Commission's satisfaction;
 - the Services Agreement with article 13.01 amended to the Commission's satisfaction;
 - the Advisory Services Agreement; and
 - the certificate of amalgamation of Sirius XM Canada Holdings Inc.
- The Commission **directs**, by **26 May 2017**, that the applicant either:
 - provide written acceptance of the Commission's proposed allocation of the discretionary portion to the Broadcasting Participation Fund (paid in two equal installments, one in year 1 and one in year 2); or
 - submit, for the Commission's approval, a proposal for the discretionary portion of the tangible benefits.

87. In a Commission letter dated 5 April 2017, the Commission found Sirius XM Canada in non-compliance with its condition of licence relating to its annual CCD contributions for the 2013-2014 broadcast year. Specifically, the licensee incurred a shortfall of \$313,021. While the Commission approves the current application, subject to the satisfaction of the conditions of approval set out above, approval of the application will take effect when the Commission receives proof of payment for the shortfall amount.

88. The Commission's review of the licensee's performance and compliance with the regulatory requirements, including its 2013-2014 CCD shortfall, will be examined as part of the Sirius XM Canada licence renewal.

Secretary General

Related documents

- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Movieola – Change in ownership and effective control and licence renewal and amendment; Silver Screen Classics – Change in ownership and licence renewal; CHCH-DT Hamilton – Change in ownership*, Broadcasting Decision CRTC 2014-421, 8 August 2014
- *Terrestrial broadcasting distribution undertakings serving various locations in Ontario, New Brunswick, and Newfoundland and Labrador; national video-on-demand programming undertaking known as Rogers On Demand; and terrestrial and direct-to-home national pay-per-view services known as Rogers Sportsnet – Acquisition of assets (corporate reorganization)*, Broadcasting Decision CRTC 2013-642, 29 November 2013

- *Canadian Satellite Radio Inc. and Sirius Canada Inc. – Change in effective control*, Broadcasting Decision CRTC 2011-240, 11 April 2011
- *Introduction to Broadcasting Decisions CRTC 2005-246 to 2005-248: Licensing of new satellite and terrestrial subscription radio undertakings*, Broadcasting Public Notice CRTC 2005-61, 16 June 2005

This decision is to be appended to the licence.