



## Broadcasting Decision CRTC 2020-53

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Reference: 2019-341

Ottawa, 7 February 2020

**Stingray Radio Inc.**  
Welland, Ontario

*Public record for this application: 2019-0441-7*  
*Public hearing in the National Capital Region*  
*3 December 2019*

### **CIXL-FM Welland and CKYY-FM Welland – Acquisition of assets**

*The Commission **approves** an application by Stingray Group Inc., on behalf of Stingray Radio Inc., for authority to acquire the assets of the English-language commercial radio stations CIXL-FM Welland and CKYY-FM Welland, Ontario, and to obtain new broadcasting licences, to continue the operation of the stations.*

#### **Application**

1. Stingray Group Inc. (Stingray Group), on behalf of Stingray Radio Inc. (Stingray Radio), filed an application for authority to acquire the assets of the English-language commercial radio stations CIXL-FM Welland and CKYY-FM Welland, Ontario. Stingray Group also requested new broadcasting licences to continue the operation of the undertakings under the same terms and conditions as those in effect under the current licences. R.B. Communications Ltd. (RBC) is the licensee of CIXL-FM and CKYY-FM, and the assets of both radio undertakings are held by Wellport Broadcasting Limited (Wellport). The Commission did not receive any interventions regarding this application.
2. Stingray Radio is a wholly-owned subsidiary of Stingray Group, a widely held Canadian public company that is effectively controlled by Mr. Eric Boyko, a Canadian residing in Canada, pursuant to the Nomination Rights Agreement and the Voting Trust Agreement. Stingray Radio is therefore eligible to hold a broadcasting licence pursuant to *Direction to the CRTC (Ineligibility of Non-Canadians)*. Following the close of the transaction, Mr. Boyko would exercise effective control of CIXL-FM and CKYY-FM and Stingray Radio would become the licensee of the stations. Stingray Radio currently operates 75 radio stations throughout Canada, as well as various television services, mainly pay and discretionary services.
3. RBC is a corporation controlled by Katlynx Communications Corporation and effectively controlled by Mr. David Holgate.

4. The purchase price for the assets of the two stations is \$6,500,000. Stingray Radio proposed a value of the transaction of \$6,868,940, which includes working capital amounts of \$360,000, as well as an assumed lease valued at \$8,940. The applicant proposed a tangible benefits package of \$412,136, which is equal to 6% of its proposed value of the transaction.

### **Regulatory framework**

5. Pursuant to section 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 review of ownership transactions is an essential element of that mandate.
6. 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. 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.

### **Commission's analysis and decisions**

7. After examining the 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 proposed transaction would be in the public interest;
  - the value of the transaction and of the tangible benefits; and
  - the length of the new licence terms for CIXL-FM and CKYY-FM.

### **Public interest**

8. To determine whether a proposed transaction is in the public interest, the Commission takes into account a wide set of factors set out in the Act, including the nature of programming and service to the communities involved as well as regional, social, cultural, economic and financial considerations. The Commission must be persuaded that the proposed transaction benefits Canadians and the broadcasting system.
9. In regard to the present case, the vendor, Mr. Holgate, indicated that he wishes to retire from the broadcasting industry. He argued that since the Niagara Region is saturated with radio signals from neighbouring markets, including the United States, and since advertisers are increasingly using Internet advertising, it is more difficult for radio stations to generate revenues. In Mr. Holgate's view, to maintain investments in programming, CIXL-FM and CKYY-FM need to benefit from the operational efficiencies of larger radio groups.

10. Stingray Radio submitted that CIXL-FM and CKYY-FM would benefit from its commitment to the community served. It stated that for the time being, it has no plans to change the stations' formats or musical programming and will continue to be involved in local events. The applicant also proposed to improve the content aired by the stations by including well-known personalities from its Canada-wide network. Finally, Stingray Radio committed to direct the discretionary portion of its tangible benefits to local initiatives.
11. The Commission notes that from a diversity of voices perspective, approval of the proposed transaction would result in the loss of an independent operator in the Welland radio market. However, given that Stringray Radio does not currently operate a station in that market and is replacing the current licensee as the operator of existing stations, it would remain a distinct operator. As such, approval of the proposed transaction would be consistent with the principles of the Commission's diversity of voices policy, set out in Broadcasting Public Notice 2008-4.
12. In addition, Stingray Radio proposed to direct the discretionary portion of its tangible benefits package, which is addressed below, to projects in the community of Welland, and committed to continue the stations' involvement in local events. Moreover, the applicant stated that the purchase agreement provides for the hiring of all of the current employees of the stations with the exception of the stations' President.
13. Finally, the Commission considers that the transaction would contribute to maintaining the financial stability and the viability of the stations, due to Stingray Radio's financial strength and knowledge of the industry, its large size as a corporation, and the fact that it operates numerous stations in markets of similar size.
14. In light of the above, the Commission finds that the transaction is in the public interest.

#### **Value of the transaction and tangible benefits**

15. The Commission's Tangible Benefits Policy is set out in Broadcasting Regulatory Policy 2014-459. 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, working capital to be transferred at closing, ancillary agreements, any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities.
16. As noted above, Stingray Radio proposed a value of the transaction of \$6,868,940, which includes \$6,500,000 for the purchase of the two stations, \$360,000 for the working capital, and \$8,940 representing the value of the assumed lease.
17. The Commission's general practice is to calculate the value of the transaction as of the date of the transaction. However, as is the case for most transactions, the actual value of certain elements is only known on the closing date, which can only occur following the date on which the Commission's decision is issued. Therefore, in reaching its determination, to reduce the regulatory burden and to avoid the inherent subjectivity of

estimates, the Commission includes known values generally available in the most recent financial statements.

18. In calculating the working capital, Stingray Radio used closing date estimates. However, the Commission finds it appropriate to use interim numbers as of 31 March 2019, as filed by the applicant, which results in an adjusted value of the working capital amounting to \$734,950, rather than \$360,000 as proposed by the applicant. Consequently, the Commission determines that the value of the transaction is \$7,243,890.
19. Pursuant to the Tangible Benefits Policy, tangible benefits for a change in the effective control of commercial radio stations must generally represent at least 6% of the value of the transaction as determined by the Commission, to be allocated to the Radio Starmaker Fund or Fonds Radiostar (3%), FACTOR or MUSICACTION (1.5%), eligible Canadian content development (CCD) initiatives at the discretion of the purchaser (1%) and the Community Radio Fund of Canada (CRFC) (0.5%).
20. As mentioned above, Stingray Radio proposed tangible benefits of \$412,136, representing 6% of the value of the transaction of \$6,868,940, the required minimum. However, based on the revised value of the transaction of \$7,243,890, the Commission calculates that the tangible benefits to be paid as a result of the present transaction amount to \$434,633 (i.e., 6% of \$7,243,890).
21. In accordance with the Tangible Benefits Policy, the Commission **directs** Stingray Radio to pay tangible benefits amounting to \$434,633, to be allocated as follows in equal annual payments over seven consecutive broadcast years:
  - 3% (\$217,317) to Radio Starmaker Fund or Fonds Radiostar;
  - 1.5% (\$108,658) to FACTOR or MUSICACTION;
  - 1% (\$72,439) to any eligible CCD initiative at the discretion of the purchaser; and
  - 0.5% (\$36,219) to the CRFC.

#### **Length of the new licence terms for CIXL-FM and CKYY-FM**

22. 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.
23. Section 10.1 of the *Radio Regulations, 1986* (the Regulations) sets out that, "[e]xcept as otherwise provided pursuant to a condition of its licence, a licensee shall own and operate its transmitter." In regard to CIXL-FM, in Decision 97-387, the Commission relieved RBC, by condition of licence, from that requirement. Currently, Wellport, a wholly owned subsidiary of RBC that is also effectively controlled by Mr. Holgate, owns and operates the station's transmitter.

24. In Broadcasting Decision 2010-770, in which the Commission renewed the broadcasting licence for CIXL-FM, the Commission did not renew that condition of licence. However, the operation of the station continued with Wellport as the owner and operator of its transmitter. Without prior Commission approval, RBC adopted the same approach for CKYY-FM, which launched in February 2015.
25. Nevertheless, the Commission considers that RBC acted in good faith in regard to the situation surrounding the ownership and operation of the stations' transmitters, and finds that the situation has not had a negative impact on the broadcasting system. Finally, Stingray Radio, through its acquisition of the assets of the two stations, would also acquire the stations' transmitters, thereby correcting any non-compliance. Accordingly, the Commission finds that no further action is required in regard to RBC's non-compliance with section 10.1 of the Regulations, and that it would be appropriate to grant a full-term broadcasting licence to each of the stations.

## Conclusion

26. In light of all of the above, the Commission **approves** the application by Stingray Group Inc., on behalf of Stingray Radio Inc. for authority to acquire the assets of the English-language commercial radio programming undertakings CIXL-FM Welland and CKYY-FM Welland, Ontario, and to obtain new broadcasting licences, to continue the operation of the undertakings.
27. Stingray Radio shall notify the Commission of the close of the transaction, and upon surrender of the current licences issued to RBC, the Commission will issue new broadcasting licences to Stingray Radio. The new licences will expire 31 August 2026. The terms and **conditions of licence** for both undertakings are set out in the appendix to this decision.

## Reminder

28. Pursuant to section 22 of the Act, the broadcasting licences will cease to have any force or effect should the broadcasting certificates issued by the Department of Industry lapse.

## Employment equity

29. 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

## 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
- *CIXL-FM Welland – Licence renewal*, Broadcasting Decision CRTC 2010-770, 19 October 2010
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Conversion of CHOW Welland from AM to FM – Approved*, Decision CRTC 97-387, 8 August 1997

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

## **Appendix to Broadcasting Decision CRTC 2020-53**

### **Terms, conditions of licence and expectation for the English-language commercial radio programming undertakings CIXL-FM Welland and CKYY-FM Welland, Ontario**

#### **Terms**

The licences will expire 31 August 2026.

#### **Conditions of licence for both stations**

1. The licensee shall adhere to the conditions set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, as well as to the conditions set out in the broadcasting licence for the undertaking.

#### **Condition of licence for CKYY-FM Welland only**

2. In order to comply with the requirements of condition of licence 2 set out in the appendix to *English-language FM radio station in Welland*, Broadcasting Decision CRTC 2014-345, 26 June 2014, the licensee shall make, for the 2019-2020 and 2020-2021 broadcast years, in addition to the basic annual contributions to Canadian content development set out in section 15 of the *Radio Regulations, 1986*, an annual contribution of \$10,000 to the promotion and development of Canadian content. Of this amount, 20% shall be devoted to FACTOR or MUSICACTION. The remainder shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

#### **Expectation**

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.