Broadcasting Decision CRTC 2023-153

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Reference: 2022-331

Ottawa, 23 May 2023

Pattison Media Ltd.
Brandon, Manitoba

Public record: 2022-0668-0
Public hearing in the National Capital Region
23 February 2023

CKLF-FM Brandon, and CKLQ-FM Brandon and its transmitter CKLQ Brandon – Acquisition of assets

Summary

The Commission **approves** an application by Pattison Media Ltd. for authority to acquire from Westman Radio Ltd. the assets of the English-language commercial radio stations CKLF-FM Brandon, and CKLQ-FM Brandon and its transmitter CKLQ Brandon.

Application

1. Pattison Media Ltd. (Pattison Media) filed an application for authorization to acquire from Westman Radio Ltd. (Westman Radio) the assets of the English-language commercial radio stations CKLF-FM Brandon, and CKLQ-FM Brandon and its transmitter CKLQ Brandon. Pattison Media also requested new broadcasting licences to continue the operation of the stations under the same terms and conditions as those in effect under the current licences.

2. Pattison Media is wholly owned by Jim Pattison Industries Ltd., which in turn is wholly owned by Jim Pattison Ltd., which is owned and controlled by James A. Pattison. Pattison Media is effectively controlled by James A. Pattison. James A. Pattison is a Canadian who resides in Canada and, therefore, Pattison Media is eligible to hold a broadcasting licence in accordance with the *Direction to the CRTC (Ineligibility of non-Canadians)*.

3. Westman Radio is wholly owned by Westman Media Ltd. The effective control of Westman Radio is exercised by its board of directors.

4. The purchase price for the assets of the stations is $5,000,000. Pattison Media proposed a value of the transaction of $5,549,079, which includes the purchase price, the working capital transferred at closing, and the total value of leases payable over five years. Pattison Media proposed a tangible benefits package of $332,944, which is 6% of the proposed value of the transaction.

5. The Commission received interventions commenting on the application from the Forum for Research and Policy in Communications (FRPC) and the Public Interest Advocacy Centre (PIAC).

Regulatory framework

6. 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 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.

7. The Commission must consider each application on its merits, according to the circumstances specific to the application. In addition, pursuant to subsection 5(1) and paragraph 5(2)(b) of the Act, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest. The public interest is reflected in the many objectives of the Act and of the Canadian broadcasting policy set out in subsection 3(1) of the Act.

8. When dealing with an application for a transfer of ownership or a change in effective control, section 11(4) of *the Radio Regulations, 1986* requires that a broadcasting licensee obtain the prior approval of the Commission before entering into any action, agreement or transaction that will result in a direct or indirect change in the effective control of its broadcasting undertaking.

Issues

9. After examining the record for this application in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:

    - whether the proposed transaction is in the public interest;
    - the value of the transaction;
    - the tangible benefits package;
    - the compliance of CKLF-FM and CKLQ-FM with regulatory requirements; and
    - the terms and conditions of licence.

Public interest of the proposed transaction

10. 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 provided 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.

Westman Radio's and Pattison Media's position

11. Westman Radio stated that radio is not its core business so it decided to sell the Brandon stations to Pattison Media, an experienced broadcaster that can take advantage of economies of scale while maintaining a local presence and operations in the market. Pattison Media submitted that it has nearly 60 years of experience in successfully operating stations in Western Canada and would bring the same high level of engagement to Brandon.

Interventions and reply

12. The FRPC submitted that Pattison Media had provided few details regarding the programming that it would offer. It was concerned that the new programming provided by Pattison Media would result from synergies with its larger broadcasting business and argued that Pattison Media should strengthen rather than maintain the level of local programming. The FRPC argued that Pattison Media should be more specific about its commitments to hire additional reporters in Brandon and increase original local news.

13. In its reply to the FRPC's intervention, Pattison Media committed to continue to build on the strong local focus and flavour of the two stations. It added that it would continue Westman Radio's commitment to cover news, sports, weather, and local events. Pattison Media stated that it strongly believes in serving the market with local personnel. Pattison Media also stated that while it respected the FRPC's desire for a further quantitative commitment for local news, it was not prepared to accept any conditions of licence beyond those of the current owners because of the uncertainty around the recovery of the economy and advertising revenues.

Commission's analysis and decision

14. Broadcasting Public Notice 2008-4 (Diversity of Voices Policy) provides that a single person cannot own three local media outlets (radio, television and newspapers) in the same market. The Commission is satisfied that there would be no impact on the diversity of voices in the market if the transaction is approved given that Pattison Media does not own any television stations or local newspapers in Brandon. Approval of the application would also ensure the continued operation of CKLF-FM and CKLQ-FM. As the only independent local radio stations in the market, they are an important source of local programming, including local news.

15. Although Pattison Media did not commit to a specific number of hours of local programming, it proposed to at least maintain the current levels broadcast by the two stations and to operate CKLF-FM and CKLQ-FM under the same terms and conditions of licence as those currently in effect. The asset purchase agreement also contains a clause whereby Pattison Media will extend offers of employment at similar or better terms to all employees, including the on-air talent. Pattison Media also stated its intention to maintain the distinct programming of the stations, targeted towards the community they serve.

16. In light of the above, the Commission finds that approving this transaction is in the public interest.

Value of the transaction

17. As set out in Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy), to calculate the value of tangible benefits, the Commission takes into account the value of the transaction as a whole, including the value of gross debt, working capital to be transferred at closing of the transaction, ancillary agreements and any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities. The value of leases is calculated over a period of five years. If applicable, these elements are added to the purchase price.

18. Pattison Media proposed a transaction value of $5,549,079. This amount includes the purchase price of the assets ($5,000,000) the value of various leases to be assumed by Pattison Media calculated over five years ($475,298) and working capital ($73,781).

19. The value of the transaction as proposed by Pattison Media is consistent with the Tangible Benefits Policy. Accordingly, the Commission determines that the value of the transaction is $5,549,079.

Tangible benefits package

20. Pursuant to the Tangible Benefits Policy, the Commission considers it appropriate to require that tangible benefits be paid pursuant to changes in the effective control of all licensed radio and television programming undertakings. Under the Tangible Benefits Policy, tangible benefits resulting from a change in ownership or control of commercial radio stations must generally represent at least 6% of the value of the transaction.

21. In Broadcasting Regulatory Policy 2022-332 (Revised Commercial Radio Policy), the Commission stated that the 6% tangible benefits formula would be maintained. The Commission also found that the allocation set out in paragraph 31 below for tangible benefits should be maintained but specified that, of the 3% of benefits that could formerly be allocated to either the Radio Starmaker Fund or Fonds RadioStar, 60% should now be directed to the Radio Starmaker Fund and 40% to Fonds RadioStar; and of the 1.5% of benefits that could formerly be allocated either to FACTOR or Musicaction, 60% should now be directed to FACTOR and 40% to Musicaction**.**

Interventions and reply

22. The FRPC submitted that the Commission should require Pattison Media to allocate half the amount it proposed to devote to the Radio Starmaker Fund ($83,236 of $166,472) to the Broadcasting Participation Fund (BPF) to prevent the BPF from suspending its operations in March 2023.

23. The PIAC submitted that the Commission should reject Pattison Media’s proposal to direct its discretionary Canadian content development (CCD) allocation to the Canadian Rocky Mountain Music Festival (the Festival) because Pattisson has been a Festival

sponsor. As such, there would not be enough significant incremental benefits to meet the test set out in the Tangible Benefits Policy, which provides that the contribution must be directed to initiatives that would not be undertaken in the absence of the transaction.

24. The PIAC further requested that the Commission exercise its discretion to split 10% of the total tangible benefits equally between the BPF and the Broadcast Accessibility Fund (BAF). The PIAC submitted that those new funds face depletion.

25. In its reply, Pattison Media stated that it had no comment on the FRPC's proposal to redirect half of the proposed amount for the Radio Starmaker Fund to the BPF, considering that this was a policy question for the Commission to decide.

26. As to the PIAC's comment on Pattison Media's sponsorship of the Festival, Pattison Media stated that it was a long-term sponsor due to its ability to allocate 1% of the tangible benefits approved in previous ownership transactions to discretionary CCD initiatives. Pattison Media stated that it had never sought to market or publicize its sponsorship of the event. Pattison Media further stated that support for the Festival related to the current application would give preference to a school band, choir or director from the Brandon area. Pattison Media further confirmed that all direct funding to CCD initiatives would go to eligible third parties as accepted by the Commission.

27. Since the Festival was cancelled during the COVID-19 pandemic, Pattison Media stated that the funds have instead been redirected to a sister organization called Save the Music (STM). During the pandemic, STM has been working in partnership with the Calgary Board of Education and the Calgary Catholic School Division to deliver clinics and instruction to high school music students to replace the support that the Festival used to provide.

28. Finally, while Pattison Media recognized the contributions made by the BPF and the BAF, it respectfully requested that the Commission deny the PIAC's request to split 10% of the proposed tangible benefits package between those two funds.

Commission's analysis and determinations

29. The PIAC argued that giving money to the Festival would be self-serving for Pattison Media. However, sponsoring a festival is an eligible initiative recognized by the Commission, as set out in paragraph 108 of Public Notice 2006-158, and confirmed in the Revised Commercial Radio Policy. Furthermore, the Commission approved the Festival as eligible for tangible benefits for Pattison Media in a previous transaction approved in Broadcasting Decision 2020-410. The Commission therefore finds that the Festival is an eligible CCD initiative with respect to the current application.

30. The PIAC and the FRPC submitted that Pattison Media should redirect a portion of its tangible benefits to other funds such as the BAF and the BPF. The Commission recognizes the importance of the BAF and BPF, however, as a basic principle, CCD funds must be used to support, develop or promote Canadian musical or spoken word talent, including eligible initiatives such as national, provincial and territorial music industry associations, contributions to scholarships and purchase of musical instruments

by educational institutions benefiting students in music and journalism, talent contests supporting the production and promotion of local music artists, including emerging artists. If tangible benefits contributions were allocated to the BAF or BPF, it would be to the detriment of the Radio Starmaker Fund, Fonds RadioStar, FACTOR, Musicaction and the Community Radio Fund of Canada (CRFC), all of whom support Canadian artists. The Commission recently reviewed the allocation of tangible benefits in the Revised Commercial Radio Policy and finds that it would not be appropriate to change the funds to which money may be directed in this case.

31. Pattison Media proposed to allocate its tangible benefits as set out in the Tangible Benefits Policy. However, the Commission amended the way funds would be allocated in the Revised Commercial Radio Policy, which was published after the application was received. Given that this revised approach would not negatively affect the applicant, the Commission considers it appropriate for funds to be allocated according to Revised Commercial Radio Policy. The Commission therefore requires Pattisson to implement a tangible benefits package of $332,945 to be paid in equal installments over seven consecutive broadcast years, allocated as follows:

- 3% ($166,472) to the Radio Starmaker Fund and Fonds RadioStar, broken down as follow;
  - 60 % ($99,883) to the Radio Starmaker Fund
  - 40% ($66,588) to Fonds RadioStar
- 1.5% ($83,236) to FACTOR and Musicaction, broken down as follows;
  - 60 % ($49,942) to FACTOR
  - 40% ($33,294) to Musicaction
- 1% ($55,491) to any eligible CCD initiative (at the discretion of the purchaser); and
- 0.5% ($27,745) to the CRFC.

Compliance of CKLF-FM and CKLQ-FM with regulatory requirements

32. When a new licence is issued, the Commission reviews the licensee’s compliance with its regulatory obligations, in particular those relating to the filing of annual reports and CCD contributions. In the case of an asset acquisition, the compliance audit is conducted at the time of application review rather than at the time of licence renewal.

33. The Commission considers that CKLF-FM is in compliance with its regulatory requirements, however it identified shortfalls with respect to CCD contributions for CKLQ-FM. These shortfalls, which total $2,674 relate to both basic and over and above CCD contributions.

34. CKLQ-FM is currently subject to the following condition of licence 2, set out in Broadcasting Decision 2017-2:

> In addition to the basic annual contribution to Canadian content development, set out in section 15 of the *Radio Regulations, 1986*, the licensee shall, upon commencement of operations, make an annual contribution of $2,500 ($17,500 over seven consecutive broadcast years) to the promotion and development of Canadian content. Of this amount, at least 20% per broadcast year 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.

35. Pattison Media explained, after consulting with Westman Radio, that the following factors led to the shortfalls:

- Westman had used the revenues of the broadcast year that was ongoing at the time to calculate basic CCD contributions, instead of using the previous year's revenues;
- the deferred payments for the 2019-2020 and 2020-2021 broadcast years were due to the impact of the COVID-19 pandemic; and
- Westman failed to report the contributions it made for the 2020-2021 broadcast year.

36. Pattison Media provided proofs of payment showing that all outstanding CCD contributions have been made, and the Commission is satisfied that CKLQ-FM's CCD contributions are up to date.

37. The seventh and final annual $2,500 payment related to CKLQ-FM's over and above CCD contributions occurs in the 2022-2023 broadcast year and must be made no later than 31 August 2023. Pattison Media committed to make this contribution and the Commission considers it would be appropriate to impose a **condition of licence** related to this commitment.

Licence terms

38. CKLF-FM's current licence expires on 31 August 2027 while CKLQ-FM's current licence expires on 31 August 2024.[1] In order to align both stations' licence terms and lighten the administrative burden, the Commission considers that it would be appropriate to have the new licences for both stations expire on 31 August 2027.

[1] CKLQ-FM's licence has been administratively renewed until 31 August 2024 in Broadcasting Decision 2022-153.

Conclusion

39. In light of all of the above, the Commission **approves** the application by Pattison Media Ltd. for authority to acquire from Westman Radio Ltd. the assets of the English-language commercial radio programming undertakings CKLF-FM Brandon, and CKLQ-FM Brandon and its transmitter CKLQ Brandon, as well as for new broadcasting licences to continue the operation of the undertakings.

40. Further, the Commission requires Pattison Media to pay tangible benefits in the amount of $332,945 over seven consecutive broadcast years and to submit acceptable proofs of payment. A **condition of licence** requiring Pattison Media to make CKLQ-FM's seventh and final annual $2,500 over and above CCD contribution for the 2022-2023 broadcast year by no later than **31 August 2023** is set out in Appendix 2 to this decision.

41. Pattison Media shall notify the Commission of the close of the transaction, and upon surrender of the licences currently held by Westman Radio, the Commission will issue new broadcasting licences to Pattison, which will expire on **31 August 2027**. The terms and conditions of licence are set out in the appendices to this decision.

Reminders

42. Pursuant to section 22 of the Act, the broadcasting licences will cease to have any force or effect if the broadcasting certificates issued by the Department of Industry (also known as Innovation, Science and Economic Development Canada) lapse.

Local news

43. Radio stations are an important daily source of local news and information for communities. Holding a broadcasting licence comes with conditions, regulatory obligations and responsibilities, which include contributing to the Canadian broadcasting system by ensuring that Canadians have access to local programming that reflects their needs and interests and informs them of important current issues.

44. Although the Revised Commercial Radio Policy does not specify a minimum level of weekly news to be broadcast, it does specify the type of spoken word material that must be included as part of a station's local programming. In accordance with that regulatory policy, the Commission reminds the licensee that its stations, in their local programming, must incorporate spoken word material of direct and particular relevance to the communities served, and that this programming must include local news, weather, sports coverage, and the promotion of local events and activities. In addition, the Commission encourages the licensee to ensure that a reasonable amount of daily local news and information is made available to those communities.

Employment equity

45. Because Pattison Media Ltd. is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Employment and Social

Development (also known as Employment and Social Development Canada), its employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2022-331, 5 December 2022
- *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022
- *Various radio programming undertakings, specialty audio programming undertakings and radio network – Administrative renewals*, Broadcasting Decision CRTC 2022-153, 10 June 2022
- *Merritt Broadcasting Ltd. – Change in ownership and effective control*, Broadcasting Decision CRTC 2020-410, 22 December 2020
- *CKLG Brandon – Conversion to the FM band*, Broadcasting Decision CRTC 2017-2, 6 January 2017
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Regulatory policy – Diversity of voices*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

This decision is to be appended to each licence.

Appendix 1 to Broadcasting Decision CRTC 2023-153

Terms, condition of licence, and expectations for the English-language commercial radio programming undertaking CKLF-FM Brandon, Manitoba

Terms

The licence will expire 31 August 2027.

Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in *Revised conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2022-334, 7 December 2022 as well as to the conditions set out in the broadcasting licence for the undertaking.

Expectations

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

Canadian emerging artists

Consistent with the Commission's determination set out in *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022 (Broadcasting Regulatory Policy 2022-332), the Commission expects the licensee to devote, in each broadcast week, at least 5% of the station's musical selections to selections from Canadian emerging artists broadcast in their entirety. The licensee should report annually on how it has met this expectation, including the percentage of selections from Canadian emerging artists out of the total number of musical selections that were aired, and the number of distinct artists whose music has been aired. The licensee should also be able to provide, upon request, information such as a list of all titles, artists, and International Standard Recording Code (ISRC) numbers.

For the purposes of the above paragraph, the definition of "Canadian emerging artist" is the same as that set out in paragraph 346 of Broadcasting Regulatory Policy 2022-332.

Indigenous musical selections

Consistent with the Commission's determination set out in *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022, the Commission expects the licensee to include Indigenous musical selections on the station's playlist. The licensee should report annually on the amount of Indigenous content aired on the station throughout the broadcast year (i.e., from 1 September to 31 August), including the percentage of Indigenous musical selections out of the total number of musical selections that were aired, and the number of distinct artists whose music has been aired. The licensee should also be able to provide, upon request, information such as a list of all titles, artists, and International Standard Recording Code (ISRC) numbers.

For the purposes of the above paragraph, the licensee may use the provisional definition of “Indigenous-Canadian musical selection” set out in paragraph 441 of Broadcasting Regulatory Policy 2022-332 to determine whether a musical selection can be considered an Indigenous musical selection.

Appendix 2 to Broadcasting Decision CRTC 2023-153

Terms, conditions of licence, and expectation for the English-language commercial radio programming undertaking CKLQ-FM Brandon and its transmitter CKLQ Brandon, Manitoba

Terms

The licence will expire 31 August 2027.

Conditions of licence

1. The licensee shall adhere to the conditions of licence set out in *Revised conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2022-334, 7 December 2022, as well as to the conditions set out in the broadcasting licence for the undertaking.

2. In order to complete the fulfillment of the requirement to make an annual contribution of $2,500 ($17,500 over seven consecutive broadcast years) to the promotion and development of Canadian content set out in *CKLQ Brandon – Conversion to the FM band*, Broadcasting Decision CRTC 2017-2, 6 January 2017, Pattison Media shall make the last annual CCD contribution of $2,500 by no later than **31 August 2023**. This contribution is in addition to the basic annual Canadian content development contribution required by the *Radio Regulations, 1986.*

Expectation

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

Canadian emerging artists

Consistent with the Commission's determination set out in *Revised Commercial Radio Policy*, Broadcasting Regulatory Policy CRTC 2022-332, 7 December 2022 (Broadcasting Regulatory Policy 2022-332), the Commission expects the licensee to devote, in each broadcast week, at least 5% of the station's musical selections to selections from Canadian emerging artists broadcast in their entirety. The licensee should report annually on how it has met this expectation, including the percentage of selections from Canadian emerging artists out of the total number of musical selections that were aired, and the number of distinct artists whose music has been aired. The licensee should also be able to provide, upon request, information such as a list of all titles, artists, and International Standard Recording Code (ISRC) numbers.

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For the purposes of the above paragraph, the licensee may use the provisional definition of "Indigenous-Canadian musical selection" set out in paragraph 441 of Broadcasting Regulatory Policy 2022-332 to determine whether a musical selection can be considered an Indigenous musical selection.