# Broadcasting Decision CRTC 2009-383

Route reference: 2009-158

Additional references: 2009-158-2, 2009-158-3

Ottawa, 26 June 2009

**Andy McNabb, on behalf of a corporation to be incorporated**
Peterborough, Ontario

*Application 2009-0253-7, received 2 February 2009*
*Public Hearing in Halifax, Nova Scotia*
*28 May 2009*

## CKKK-FM Peterborough - Acquisition of assets

*The Commission* ***approves*** *the application by Andy McNabb, on behalf of a corporation to be incorporated, for authority to acquire from King's Kids Promotions Outreach Ministries Incorporated the assets of CKKK-FM Peterborough and for a broadcasting licence to continue the operation of the undertaking.*

## Introduction

1. The Commission received an application by Andy McNabb, on behalf of a corporation to be incorporated, (McNabb) for authority to acquire from King's Kids Promotions Outreach Ministries Incorporated (King's Kids) the assets of the English-language specialty radio programming undertaking CKKK-FM Peterborough. The applicant also requested 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.

2. McNabb will be wholly-owned by Holdco, a corporation to be incorporated, (Holdco). In turn, Holdco will be owned and controlled by its sole shareholder and director, Andy McNabb. McNabb and Holdco will be Canadian corporations within the meaning of the *Direction to the CRTC (Ineligibility of Non-Canadians).*

3. The Commission received an intervention by Trust Communications Ministries (Trust), the licensee of CJLF-FM, a Christian music station serving Barrie with transmitters in Peterborough and Owen Sound. Trust supported the application provided McNabb committed to offer a format other than Christian music on CKKK-FM. In response, McNabb noted that the present application is to acquire the assets of an existing Peterborough radio station, not a request for a broadcasting licence to operate a new station.

4. The Commission notes that, as set out in Broadcasting Decision 2004-201, CKKK-FM is licensed as a specialty radio station that offers a Christian music service. McNabb has accepted to continue the Christian music format on CKKK-FM.

5. The Commission has identified the following issues to be addressed in its determinations:

- the sale of the undertaking within its first licence term;
- the assessment of the value of the transaction; and
- the tangible benefits required on transfers of ownership.

## Sale of CKKK-FM within its first licence term

6. In Broadcasting Notice of Consultation 2009-158, the Commission noted that the broadcasting licence for CKKK-FM was approved in Broadcasting Decision 2004-201 and amended in Broadcasting Decision 2007-224. Consequently, the proposed transaction would occur within the first licence term. When examining such transactions, the Commission is concerned with the following two areas:

- the integrity of the licensing process; and
- the potential gain to the vendor.

### Integrity of the licensing process

7. In Broadcasting Decision 2004-201, the Commission approved an application by King's Kids to operate a specialty FM station to provide a Christian music service to listeners in Peterborough. King's Kids committed to broadcast 126 hours per week of local, station-produced programming. The station launched on 24 November 2004. On 31 March 2008, the station went off air.

8. As part of its application, McNabb submitted evidence that King's Kids had invested significant effort and resources to fulfilling the commitments made in its application for a broadcasting licence to serve radio listeners in Peterborough. McNabb indicated that, despite King's Kid's efforts, CKKK-FM has been losing money since it began operation and its financial situation worsened in early 2008. The vendor explained that CKKK-FM was forced off the air on 31 March 2008 because the lease on its transmitter site had lapsed and it was unable to conclude a contract with the new owner of the site. King's Kid's maintained that, without the proposed transaction, CKKK-FM would, at best, be able to provide a minimal radio service.

9. For its part, McNabb affirmed that it has the broadcasting experience needed to improve CKKK-FM's financial situation and ensure the station's continued operation. McNabb also indicated that it would introduce programming changes to better serve the target audience in Peterborough.

10. The Commission considers that the proposed transaction would provide the financial stability needed to ensure the station's long-term viability. The Commission is therefore satisfied that the integrity of the licensing process would not be compromised by approval of the proposed transaction.

#### Potential gain to the vendor

11. When an undertaking is sold within the first licence term, the Commission determines the profit by deducting the start-up costs from the value of the transaction. The Commission also considers the investment in fixed assets in determining the profit. Finally, the Commission takes into account cumulative losses in assessing the profit remaining to the vendor.

12. The pre-operating costs for CKKK-FM amount to $13,900. The applicant did not provide the costs for investments in fixed assets but did indicate that CKKK-FM's cumulative losses totalled $311,235, which includes investments in fixed assets. It submitted that, in accordance with generally accepted accounting principles, the station is entitled to such accounting of fixed assets because it is a small not-for-profit organization.

13. The Commission recognizes that requiring a small, not-for-profit station such as CKKK-FM to examine its records to determine the amount of investment in fixed assets would represent an excessive regulatory burden. Considering that the value of these investments is included in the cumulative losses reported for the station and considering Commission practice to take into account cumulative losses in assessing reasonable profit, the Commission has determined that the value of the transaction of $190,000, as described below, will not cover CKKK-FM's combined start-up costs of $13,900 and the cumulative losses of $311,235.

14. In light of the above and based on financial evidence provided by the applicant, the Commission is satisfied that the vendor does not stand to realize an unreasonable financial gain from the sale of the undertaking.

15. As noted above, the Commission is concerned when broadcasting undertakings are put up for sale within the first licence term or shortly after a previous sale. Accordingly, the Commission will continue to examine such transactions carefully to ensure that there is no potential for licence trafficking.

### Assessment of the value of the transaction

16. 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 proposed value of the transaction is acceptable and reasonable. In accordance with the terms of the Asset Purchase Agreement, the applicant submitted that the value of the transaction would be $190,000.

17. The Commission notes that the applicant would not be assuming any liability or lease commitments. The Commission therefore considers that the appropriate value of the transaction is $190,000, as proposed by the applicant.

## Tangible benefits required on ownership transactions

18. As set out in Public Notice 1998-41 (Commercial Radio Policy 1998) and reaffirmed in Broadcasting Public Notice 2006-158 (Commercial Radio Policy 2006), the Commission requires that parties seeking to acquire ownership or control of profitable radio undertakings make commitments in the form of tangible benefits of no less than 6% of the value of transactions. In Public Notice 1998-41, the Commission stipulated that it would be prepared to forgo benefits requirements in the case of transactions involving the sale of unprofitable undertakings. However, the Commission also stated that it would not "systematically apply this exemption to stations in the first five years of operation." At the time of the filing of the application, CKKK-FM was still within this five-year period.

19. McNabb requested an exemption from the tangible benefits requirements because of the station's financial losses and the fact that it is currently not on air. McNabb contended that the proposed transaction is needed to ensure the station's continued operation. The applicant nevertheless confirmed that it would pursue the transaction if the Commission imposed tangible benefits.

20. The Commission considers that tangible benefits are costs of doing business and the cost of using the public airwaves for commercial gain. It is normal for a station to encounter some financial difficulties in the first few years following its launch. The Commission has considered the applicant's arguments but does not find the rationale satisfactory to support an exemption from the Commission's tangible benefits requirements. Accordingly, the Commission determines that McNabb must pay clear and unequivocal benefits representing a minimum direct financial contribution of $11,400, i.e. 6% of the value of the transaction, which is $190,000.

21. The Commission's long-standing radio tangible benefits policy emphasizes that payments should be made to third parties, should not be self serving and should be incremental; that is, over and above the normal cost of doing business. In proposing tangible benefits in the application, McNabb indicated that it would direct 1% of the value of the transaction to funding marriage and family conferences that would be recorded for broadcast on CKKK-FM. While it would appear that the proposed funding could support the creation of spoken word programming, the Commission is concerned that the initiative, as presently structured, could ultimately benefit CKKK-FM to some degree. The Commission therefore does not accept the proposed initiative as an eligible tangible initiative. McNabb must direct this 1% of the value of the transaction to eligible initiatives, as set out in paragraph 23 below.

22. In accordance with Commission practice, McNabb's tangible benefits contribution must be expended equally over a seven-year period. Consistent with Public Notice 1998-41 and as reaffirmed in Broadcasting Public Notice 2006-158, the Commission expects the financial contribution to be distributed as follows:

- 3% of the value of the transaction to be allocated to the Radio Starmaker Fund;

- 2% of the value of the transaction to be allocated, at the discretion of the purchaser, to FACTOR or MUSICACTION; and

- 1% of the value of the transaction to be allocated to either of the above initiatives, to other eligible Canadian content development initiatives as set out in Broadcasting Public Notice 2006-159 or to other eligible third parties.

23. The Commission reminds McNabb that these benefit expenditures are incremental to those required under CKKK-FM existing condition of licence stipulating that the licensee must spend a minimum of $3,000 per year in support of Canadian talent development as detailed in condition of licence 5 set out in the appendix to this decision.

## Conclusion

24. In light of the above, the Commission **approves** the application by Andy McNabb, on behalf of a corporation to be incorporated, for authority to acquire from King's Kids Promotions Outreach Ministries the assets of the English-language specialty radio programming undertaking CKKK-FM Peterborough and for a broadcasting licence to continue the operation of the undertaking. The terms and **conditions** of the new licence are set out in the appendix to this decision.

Secretary General

### Related documents

- *CKKK-FM Peterborough – Technical change*, Broadcasting Decision CRTC 2007-224, 9 July 2007

- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

- *Christian music FM radio station*, Broadcasting Decision CRTC 2004-201, 9 June 2004

- *Commercial Radio Policy 1998,* Public Notice CRTC 1998-41, 30 April 1998

- *Direction to the CRTC (Ineligibility of Non-Canadians),* Order in Council P.C. 1997-486, 8 April 1997

# Appendix to Broadcasting Decision CRTC 2009-383

## Terms and conditions of licence for the English-language specialty programming undertaking CKKK-FM Peterborough

### Terms

The licence will expire 31 August 2010, the current expiry date.

The Commission will issue a new licence for this undertaking once:

- the current licence issued to King's Kids Promotions Outreach Ministries Incorporated has been surrendered to the Commission; and

- 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.

### Conditions of licence

1. The licence will be subject 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, with the exception of condition of licence 7.

2. The station shall be operated within the specialty format as defined in *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000 and *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995, as amended from time to time.

3. The licensee shall ensure that a minimum of 90% of all musical selections broadcast during each broadcast week shall be devoted to selections drawn from subcategory 35 (non-classic religious).

4. The licensee shall ensure that, during each broadcast week, a minimum of 15% of musical selections drawn from category 3 - Special interest music are Canadian selections.

5. The licensee shall devote a minimum of $3,000 per year to support Canadian talent development. Through a talent contest, the $3,000 shall be allocated as follows**:** the first-prize winner will receive $1,500 for the professional production of a CD; the second- and third-prize winners will receive $900 and $600, respectively.