



Broadcasting Decision CRTC 2014-654

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Route reference: 2014-472

Ottawa, 16 December 2014

Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner), carrying on business as Jim Pattison Broadcast Group Limited Partnership

Edmonton, Alberta; and Prince Albert, La Ronge, Big River, Waskesiu Lake, North Battleford and Meadow Lake, Saskatchewan

Application 2014-0639-8, received 10 July 2014

Public hearing in the National Capital Region

12 November 2014

Various radio stations in Alberta and Saskatchewan – Acquisition of assets

*The Commission **approves** an application by Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner), carrying on business as Jim Pattison Broadcast Group Limited Partnership, for authority to acquire from Rawlco Radio Ltd. (Rawlco) the assets of the following radio stations:*

- *CKNO-FM Edmonton*
- *CIUP-FM Edmonton*
- *CKBI Prince Albert and its transmitters CKBI-FM La Ronge and CKBI-FM-1 Big River*
- *CFMM-FM Prince Albert and its transmitter CFMM-FM-1 Waskesiu Lake*
- *CHQX-FM Prince Albert and its transmitters CHQX-FM-1 Waskesiu Lake, CHQX-FM-2 La Ronge and CHQX-FM-3 Big River*
- *CJCQ-FM North Battleford and its transmitter CJCQ-FM-1 Meadow Lake*
- *CJHD-FM North Battleford*
- *CJNB North Battleford*
- *CJNS-FM Meadow Lake*

In addition, the Commission requires Rawlco to make contributions to FACTOR, as set out in the decision, in order to make up shortfalls in required contributions to Canadian content development.

Application

1. The Commission received an application by Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner), carrying on business as Jim Pattison Broadcast Group Limited Partnership (Pattison), for authority to acquire from Rawlco Radio Ltd. (Rawlco) the assets of the radio stations CKNO-FM Edmonton and CIUP-FM Edmonton,¹ Alberta; and CKBI Prince Albert and its transmitters CKBI-FM La Ronge and CKBI-FM-1 Big River, CFMM-FM Prince Albert and its transmitter CFMM-FM-1 Waskesiu Lake, CHQX-FM Prince Albert and its transmitters CHQX-FM-1 Waskesiu Lake, CHQX-FM-2 La Ronge and CHQX-FM-3 Big River, CJCQ-FM North Battleford and its transmitter CJCQ-FM-1 Meadow Lake, CJHD-FM North Battleford, CJNB North Battleford and CJNS-FM Meadow Lake, Saskatchewan. The applicant 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. The Commission did not receive any interventions in connection with this application.
2. Pattison is owned and controlled by Mr. James A. Pattison through various subsidiaries.
3. Following the completion of the transaction, Pattison would become the licensee of the above-noted radio stations.
4. In Broadcasting Notice of Consultation 2014-472, the Commission noted that for CIUP-FM and CKNO-FM, Rawlco was in apparent non-compliance with these stations' conditions of licence relating to Canadian content development (CCD) contributions.

Commission's analysis and decisions

5. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that the issues that it must address relate to the following:
 - the value of the transaction;
 - the proposed tangible benefits package;
 - the apparent non-compliance regarding CCD contributions for CIUP-FM;
 - the apparent non-compliance regarding CCD contributions for CKNO-FM;
 - the payment of remaining CCD contributions; and
 - the length of the new licence term for CKNO-FM.

¹ Prior to 19 October 2010, this station operated under the call sign CHMC-FM Edmonton.

Value of the transaction

6. 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 benefits proposed in the application are commensurate with the size and nature of the transaction.
7. Pursuant to the Asset Purchase Agreement dated 7 July 2014, Pattison will purchase the assets for \$104,150,000. In addition, the applicant set the value of leases that it would be assuming following the closing of the transaction at \$2,772,125. Accordingly, Pattison stated that the total value of the transaction would be \$106,922,125.
8. The Asset Purchase Agreement provides for the purchase price to be adjusted to reflect the value of the working capital from the date of closing of the transaction. In accordance with its general practice, and to ensure predictability going forward, the Commission has calculated the value of the working capital for the present transaction as of the date of the transaction (i.e., the date of the signing of the purchase agreement), making adjustments as required pursuant to the provisions of the Asset Purchase Agreement. As set out in a balance sheet for the undertakings being purchased that was filed by Pattison, the working capital amounts to \$5,093,837.
9. Accordingly, the Commission determines that the revised value of the transaction amounts to \$112,015,962, as set out below:

Purchase price	\$104,150,000
Working capital	\$5,093,837
Adjusted purchase price	<u>\$109,243,837</u>
Additions:	
Assumed leases	\$2,772,125
Value of the transaction	<u>\$112,015,962</u>

Proposed tangible benefits package

10. Consistent with the Commission's tangible benefits policy for radio set out in Broadcasting Public Notice 2006-158,² Pattison proposed a tangible benefits package equal to 6% of the proposed \$106,922,125 value of the transaction (i.e., \$6,415,328).

² The Commission notes that it reaffirmed its tangible benefits policy for radio in Broadcasting Regulatory Policy 2014-459.

11. Consistent with the revised value of the transaction, the required value of the proposed tangible benefits package will increase from the proposed \$6,415,328 to \$6,720,958 (i.e., 6% of the revised amount of \$112,015,962).
12. In accordance with Broadcasting Regulatory Policy 2014-459 and in consideration of the revised value of the transaction, the Commission **directs** Pattison to allocate its tangible benefits contribution amounting to \$6,720,958 over seven consecutive broadcast years as follows:
 - 3% (\$3,360,479) to the Radio Starmaker Fund or Fonds Radiostar;
 - 1.5% (\$1,680,239) to FACTOR or MUSICACTION;
 - 1% (\$1,120,160) at the discretion of the purchaser, to any eligible CCD initiative; and
 - 0.5% (\$560,080) to the Community Radio Fund of Canada.
13. In regard to the discretionary portion of the tangible benefits contribution, Pattison proposed the following initiatives:
 - Saskatchewan Recording Industry Association
 - Saskatchewan Country Music Association
 - North Battleford Canada Day
 - Prince Albert Kiwanis Music Festival
 - Edmonton Kiwanis Music Festival
 - St. Albert Children's Festival
 - Canadian Broadcast Museum Foundation
14. Based on the information provided by Pattison, it is the Commission's view that these initiatives fulfil the criteria for eligible CCD initiatives set out in paragraphs 107 and 108 of Broadcasting Public Notice 2006-158.

Apparent non-compliance regarding Canadian content development contributions for CIUP-FM Edmonton

15. In Broadcasting Notice of Consultation 2014-472, the Commission noted that Rawlco appeared to be in non-compliance with CIUP-FM's condition of licence relating to CCD contributions (condition of licence 3 set out in the appendix to Broadcasting Decision 2010-640). However, following a thorough review of the station's records, the Commission finds that the licensee is in full compliance with CIUP-FM's CCD condition of licence.

Apparent non-compliance regarding Canadian content development contributions for CKNO-FM Edmonton

16. In Broadcasting Decision 2008-288, following a competitive licensing hearing, the Commission granted a broadcasting licence to Rawlco to operate an English-language commercial FM radio station in Edmonton, which would launch as CKNO-FM in February 2010. In that decision, the Commission imposed a condition of licence relating to CCD contributions that are over and above those required pursuant to section 15 of the *Radio Regulations, 1986* (the Regulations).
17. A review of Rawlco's annual returns for CKNO-FM showed that this licensee, for the 2010-2011, 2011-2012 and 2012-2013 broadcast years, made over-and-above CCD expenditures in the annual amounts of \$156,494, \$149,316 and \$151,187, respectively, for its Emerging Artist Promotion initiative, and that these expenditures were paid via contra agreements with independent third parties, primarily newspapers and billboard providers.
18. In a letter dated 13 August 2014, the Commission requested that Rawlco provide supporting documentation on whether these expenditures were direct, "out-of-pocket" expenditures, or in-kind expenditures (i.e., expenditures that are paid with the exchange of goods or services). In reply, Rawlco argued that each of its direct advertising campaigns was not provided in-kind. It maintained that its contributions to the Emerging Artist Promotion initiative via a variety of third-party media formats were a direct CCD expense, and that each campaign was negotiated and purchased from arm's length third parties. It indicated, however, that should the Commission determine that its advertising campaigns do not comply with the CCD policy, it would contribute the appropriate amount of funding to FACTOR in order to ensure compliance.
19. Under the Commission's CCD policy, set out in Broadcasting Public Notice 2006-158, all CCD initiatives must involve direct expenditures. In-kind expenditures are not eligible to be claimed as CCD expenditures. In the Commission's view, upon review of the documentation submitted by Rawlco, the expenditures in question involved contra agreements with third parties, which constituted an exchange of goods and services, and were therefore not direct expenditures. As such, the expenses claimed for the Emerging Artist Promotion initiative for the 2010-2011 through 2012-2013 broadcast years are ineligible as CCD contributions. Consequently, the Commission finds Rawlco in non-compliance with CKNO-FM's condition of licence relating to CCD contributions for those broadcast years.
20. In light of the above, the Commission **directs** Rawlco to pay \$456,997 to FACTOR in order to fulfill the shortfall amounts of \$156,494, \$149,316 and \$151,187 for the 2010-2011, 2011-2012 and 2012-2013 broadcast years, respectively, and to provide the Commission with appropriate proof that this payment was made, by no later than **5 p.m. Pacific Standard Time (8 p.m. Eastern Standard Time) on the closing date of the transaction.**

Payment of remaining Canadian content development contributions

21. Pattison indicated that, upon the closing of the transaction, it would assume CKNO-FM's remaining required CCD contributions of \$639,250, \$636,750 and \$304,250 (pro-rated first year of operation) for the 2014-2015, 2015-2016 and 2016-2017 broadcast years, respectively. The Commission considers it appropriate to require Pattison to complete payment of these remaining contributions by no later than the end of the 2016-2017 broadcast year, and to provide appropriate proof that the contributions have been made. A **condition of licence** to that effect is set out in the appendix to this decision.

Length of licence term for CKNO-FM Edmonton

22. In Broadcasting Information Bulletin 2011-347, the Commission announced a revised approach to non-compliance by radio stations. Specifically, the Commission indicated that each instance of non-compliance would be evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The Commission also indicated that it would consider the circumstances of the non-compliance, the arguments provided by the licensee and the measures taken to rectify the situation.
23. The broadcasting licence for CKNO-FM was granted to Rawlco as part of a competitive licensing process, based in part on the quality of the application filed, including its commitments to CCD. Given the seriousness of the non-compliance, the circumstances related to the non-compliance and the measures to be taken by the licensee to correct the incurred shortfalls, the Commission considers that it would be appropriate to grant a short-term licence of four years for CKNO-FM.

Conclusion

24. In light of all of the above, the Commission **approves** the application by Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner), carrying on business as Jim Pattison Broadcast Group Limited Partnership, for authority to acquire from Rawlco Radio Ltd. the assets of the radio stations CKNO-FM Edmonton and CIUP-FM Edmonton, Alberta; and CKBI Prince Albert and its transmitters CKBI-FM La Ronge and CKBI-FM-1 Big River, CFMM-FM Prince Albert and its transmitter CFMM-FM-1 Waskesiu Lake, CHQX-FM Prince Albert and its transmitters CHQX-FM-1 Waskesiu Lake, CHQX-FM-2 La Ronge and CHQX-FM-3 Big River, CJCQ-FM North Battleford and its transmitter CJCQ-FM-1 Meadow Lake, CJHD-FM North Battleford, CJNB North Battleford and CJNS-FM Meadow Lake, Saskatchewan.
25. Upon surrender of the current licences issued to Rawlco, the Commission will issue new broadcasting licences to Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner), carrying on business as Jim Pattison Broadcast Group Limited Partnership. The new licences will expire 31 August 2021, with the exception of that for CKNO-FM, which will expire

31 August 2018. The terms and **conditions of licence** for these stations are set out in the appendix to this decision.

Employment equity

26. Because Pattison 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

- *A targeted review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2014-472, 12 September 2014
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *CHMC-FM Edmonton – Licence renewal and amendment*, Broadcasting Decision CRTC 2010-640, 31 August 2010
- *Licensing of new radio stations to serve Edmonton, Alberta*, Broadcasting Decision CRTC 2008-288, 17 October 2008
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

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

Appendix to Broadcasting Decision CRTC 2014-654

Terms, conditions of licence, expectation and encouragement for the radio programming undertakings of which the assets are being acquired in this decision

Terms

CIUP-FM Edmonton, Alberta; and CKBI Prince Albert and its transmitters CKBI-FM La Ronge and CKBI-FM-1 Big River, CFMM-FM Prince Albert and its transmitter CFMM-FM-1 Waskesiu Lake, CHQX-FM Prince Albert and its transmitters CHQX-FM-1 Waskesiu Lake, CHQX-FM-2 La Ronge and CHQX-FM-3 Big River, CJCQ-FM North Battleford and its transmitter CJCQ-FM-1 Meadow Lake, CJHD-FM North Battleford, CJNB North Battleford and CJNS-FM Meadow Lake, Saskatchewan

The licences will expire 31 August 2021.

CKNO-FM Edmonton, Alberta

The licence will expire 31 August 2018.

Conditions of licence

Conditions of licence applicable to CKNO-FM Edmonton and CIUP-FM Edmonton, Alberta; and CKBI Prince Albert and its transmitters CKBI-FM La Ronge and CKBI-FM-1 Big River, CFMM-FM Prince Albert and its transmitter CFMM-FM-1 Waskesiu Lake, CHQX-FM Prince Albert and its transmitters CHQX-FM-1 Waskesiu Lake, CHQX-FM-2 La Ronge and CHQX-FM-3 Big River, CJCQ-FM North Battleford and its transmitter CJCQ-FM-1 Meadow Lake, CJHD-FM North Battleford and CJNB North Battleford, Saskatchewan

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.

Conditions of licence applicable to CJNS-FM Meadow Lake, Saskatchewan

2. 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, with the exception of condition of licence 8, which relates to the solicitation of local advertising.

Condition of licence applicable to CIUP-FM Edmonton, Alberta

3. The licensee shall broadcast a two-hour Specialty Smooth Jazz program in each broadcast week.

Conditions of licence applicable to CKNO-FM Edmonton, Alberta

4. The licensee shall, as an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations):

- a) devote, in each broadcast week, a minimum of 40% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety; and
- b) devote, between 6:00 a.m. and 6:00 p.m., in any period beginning on Monday of a week and ending on Friday of the same week, a minimum of 40% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety.

For the purposes of this condition, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meaning as that set out in the Regulations.

5. The licensee shall, by no later than **31 August 2017**, fulfill any Canadian content development (CCD) obligations that were imposed in *Licensing of new radio stations to serve Edmonton, Alberta*, Broadcasting Decision CRTC 2008-288, 17 October 2008, and that have not been satisfied by the previous licensee. It shall also file appropriate proof of payment validating that all CCD contributions have been paid in full.

Expectation applicable to CKNO-FM Edmonton, Alberta

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

Encouragement applicable to CHQX-FM Prince Albert and its transmitters CHQX-FM-1 Waskesiu Lake, CHQX-FM-2 La Ronge and CHQX-FM-3 Big River, Saskatchewan

The Commission encourages the licensee to continue to devote a minimum of 40% of all content category 2 (Popular Music) musical selections broadcast to Canadian musical selections, during each broadcast week, and between 6:00 a.m. and 6:00 p.m. Monday to Friday. The Commission notes that this level exceeds the 35% requirement for Canadian content category 2 musical selections set out in the *Radio Regulations, 1986*.