



Broadcasting Decision CRTC 2007-434

Ottawa, 24 December 2007

**Rogers Broadcasting Limited, on behalf of itself
and Larche Communications (Kitchener) Inc.**
Kitchener and Orillia, Ontario

*Applications 2007-0987-6 and 2007-0986-8, received 9 July 2007
Public Hearing in Kelowna, British Columbia
30 October 2007*

Exchange of radio assets

*Subject to the filing requirement set out below, the Commission **approves** applications by Rogers Broadcasting Limited (Rogers), on behalf of itself and Larche Communications (Kitchener) Inc. (Larche), for authority to exchange the assets of CICX-FM Orillia and CIKZ-FM Kitchener. Rogers and Larche must file, within 30 days of the date of this decision, a revised value of the transaction for their respective acquired assets and a revised tangible benefits package that reflects the revised value of the transaction.*

Introduction

1. The Commission received applications by Rogers Broadcasting Limited (Rogers), on behalf of itself and Larche Communications (Kitchener) Inc. (Larche) (the applicant), for authority to exchange the assets of two radio programming undertakings: CICX-FM Orillia and CIKZ-FM Kitchener. The applicant also requested new broadcasting licences to continue the operation of the radio stations under the same terms and conditions as those set out in their current licences.
2. Rogers is the current licensee of CICX-FM Orillia and a minority shareholder of Larche with a 29.9% voting interest in Larche.
3. Larche is the current licensee of CIKZ-FM Kitchener. Larche is controlled by Larche Communications Inc., which holds 70.1% of the voting interest in Larche.
4. Pursuant to an agreement between Rogers and Larche, Rogers would purchase the assets of CIKZ-FM Kitchener for \$12.2 million. Payment of that price would include the transfer of CICX-FM Orillia's assets to Larche for an assessed value of \$4 million. Some of the remainder would be paid through Rogers' delivery of a promissory note that would, in turn, be used to redeem the 29.9% ownership interest held by Rogers in Larche, which is valued at \$4 million. Rogers would pay the remaining \$4.2 million in cash to Larche.

5. Durham Radio Inc. (Durham), the licensee of CJKX-FM Ajax, CKGE-FM and CKDO Oshawa, intervened in opposition to the proposed exchange of assets between Rogers and Larche. Ms. Bettina Weissenbrunner intervened against Rogers' acquisition of the Kitchener station.
6. After reviewing the applications and the interventions, the Commission considers that the issues raised by these applications are:
 - the sale of broadcasting undertakings during their first licence term;
 - the value of the transactions;
 - the tangible benefits required on transfers of ownership; and
 - the unfulfilled tangible benefits from Rogers' acquisition of CICX-FM in 2002.

Sale of broadcasting undertakings during their first licence term

7. The Commission is generally concerned when broadcasting undertakings are put up for sale within their first licence term. Such transactions raise issues relating to the integrity of the licensing process and the potential for licence trafficking.
8. In Durham's view, Larche is seeking to profit from the transfer of a broadcasting licence before it had completed the initial licence term and thus fulfil the original terms on which the licence was obtained following a competitive process in 2002. Both Durham and Ms. Weissenbrunner expressed concern that the proposed transactions would reduce diversity of ownership and editorial voices in the Kitchener radio market.
9. In the present case, the Commission notes that, although the original licensing process in each of these markets was competitive, the Commission licensed a variety of new services. The Commission also acknowledges that Larche made considerable investments in launching the Kitchener station. Specifically, Larche implemented a state of the art transmitter, constructed new studio facilities and expended substantially on programming staff and promotion as well as marketing initiatives. In light of these expenditures and Larche's commitment to re-invest all the proceeds of the sale into 100% ownership of another station, the Commission is of the view that Larche does not stand to realize an unreasonable financial gain from the sale of the Kitchener station.
10. The Commission is persuaded by the arguments presented by Rogers and Larche that the proposed transactions would allow Larche to withdraw itself from the partnership and further consolidate its efforts in central Ontario. Larche will therefore be able to strengthen its Orillia station. Accordingly, on balance, the Commission is satisfied that the transactions are in the public interest and that the integrity of its licensing process would not be compromised by approval of these applications.

Value of the transactions

11. 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 tangible benefits proposed in the application are adequate and that the proposed value of the transaction is acceptable and reasonable. In this regard, the Commission generally expects applicants to make commitments to tangible benefits representing a financial contribution of 6% of the value of the transaction for radio undertakings.
12. The applicant submitted that the value of transaction involving CIKZ-FM Kitchener's assets would be \$12.2 million and the value of transaction involving CICX-FM Orillia's assets would be \$4 million. In assessing the value of each of these transactions, the Commission compared them to a number of valuations in previous applications that it has approved. Based on a comparison of the applicant's revenue and EBITDA (earnings before interest, taxes, depreciation and amortization) multiples with those of previous transactions, the Commission is satisfied that, subject to any adjustment on account of assumed operating leases, as noted below, the applicant's valuations are reasonable.
13. Consistent with its practice for the purpose of calculating the value of the transaction, the Commission determines that the assumed operating lease commitments for each station should be included in the value of each transaction. Accordingly, the Commission requires Rogers and Larche to file, within 30 days of the date of this decision, the value of all operating leases that each party will assume as a result of these transactions, including the value of the operating leases identified in Schedule 2.1(a) of each of the asset purchase and transfer agreements, to be added to the final value of each transaction. These values must include the amounts for these leases that the party in question disclosed in accordance with generally accepted accounting principles (GAAP) in the notes to its financial statements for the most recent fiscal year.

Tangible benefits

14. In Broadcasting Public Notice 2006-158 (the Commercial Radio Policy), the Commission stated that, in the context of applications for the transfer of ownership or control of radio undertakings, it would continue to require a minimum direct financial contribution of 6% of the value of the transaction related to radio undertakings to Canadian content development (CCD). This amount is based on the value of the regulated assets included in the transaction and must be allocated as follows:
 - 3% to the Radio Starmaker Fund (Starmaker) and Fonds Radiostar;
 - 2% to FACTOR or MUSICACTION; and
 - 1%, at the discretion of the purchaser, to any eligible CCD initiative. Parties and initiatives eligible for CCD funding are identified in paragraph 108 of Broadcasting Public Notice 2006-158.

15. Based on the proposed value of the transactions submitted in the applications, the applicant proposed the following tangible benefits packages. Rogers would contribute \$732,000 in benefits over seven consecutive years for the acquisition of the Kitchener station, which is equal to 6% of the proposed \$12.2 million value of that transaction. These benefits would be allocated as follows:
- \$366,000 to Starmaker ;
 - \$244,000 to FACTOR; and
 - \$122,000 to an annual local song writers' competition in Kitchener to help defray costs associated with talent, recording and CD production.
16. Larche would contribute \$240,000 in benefits over seven consecutive years for the acquisition of the Orillia station, representing 6% of the proposed \$4 million value of that transaction. These benefits would be allocated as follows:
- \$120,000 to Starmaker;
 - \$80,000 to FACTOR;
 - \$20,000 to the Music in Schools Program to purchase musical instruments and equipment for elementary and secondary schools in the Orillia area;
 - \$10,000 to the Kiwanis Music Festival for cash awards to festival winners; and
 - \$10,000 to the Mariposa Folk Festival.
17. Funding to Starmaker and FACTOR are required by the current tangible benefits policy and is therefore considered appropriate. Moreover, the Commission considers the proposed discretionary initiatives are eligible expenses. However, in light of the Commission's determination regarding the value of the transaction, Rogers and Larche must propose additional tangible benefits for each transaction.

Unfulfilled benefits

18. Rogers acquired CICX-FM Orillia as part of a larger transaction, approved in Broadcasting Decision 2002-92, which saw Rogers acquiring the assets of 14 Ontario radio stations from Standard Radio Inc. In the present application, Rogers indicated that Larche would operate CICX-FM in accordance with its existing conditions of licence, including the requirement to expend \$48,914.40 in benefits, which Rogers identified as the portion of outstanding benefits flowing from Broadcasting Decision 2002-92 attributable to CICX-FM.

19. The Commission, however, reminds Rogers that the benefits outlined in Broadcasting Decision 2002-92 were established as corporate benefits. No portion of the benefits was attributed to any of the individual stations acquired at that time. Consequently, the Commission finds that Larche is not responsible to cover these outstanding benefits. Rogers must expend the full amount of the benefits flowing from Broadcasting Decision 2002-92, including the outstanding \$48,914.40 in benefits identified by Rogers as attributable to CICX-FM.

Conclusion

20. Based on all of the above and subject to the filing requirement described below, the Commission **approves** the applications by Rogers Broadcasting Limited, on behalf of itself and Larche Communications (Kitchener) Inc., for authority to exchange the assets of CICX-FM Orillia and CIKZ-FM Kitchener. The Commission requires Rogers and Larche to file, within 30 days of the date of this decision, the following:
- a revised value of each transaction that is acceptable to the Commission and that reflects the Commission's determination set out in paragraph 13 above; and
 - a revised tangible benefits package for each transaction indicating how each party will allocate the additional tangible benefits required as a result of the revised value of each transaction.
21. Upon surrender of the current licences, the Commission will issue a new broadcasting licence for CIKZ-FM to Rogers and a new broadcasting licence for CICX-FM to Larche. The licences will be subject to the terms and **conditions** for each station set out in Appendices 1 and 2, respectively.

Employment equity

22. Because Rogers and Larche are each subject to the *Employment Equity Act* and file reports concerning employment equity with the Department of Human Resources and Skills Development, their employment equity practices are not examined by the Commission.

Secretary General

Related documents

- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Country FM radio station in Kitchener-Waterloo*, Broadcasting Decision CRTC 2003-153, 14 May 2003

- *Rogers acquires the assets of radio stations and a radio network in Ontario*, Broadcasting Decision CRTC 2002-92, 19 April 2002
- *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, Public Notice CRTC 1993-68, 26 May 1993

This decision and the appropriate appendix must be attached to each licence. This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix 1 to Broadcasting Decision CRTC 2007-434

Terms and conditions of licence for CIKZ-FM Kitchener

Terms

The licence will expire 31 August 2009, the current licence expiry date.

Conditions of licence

1. The licence shall be subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, with the exception of condition of licence number 5.
2. 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*, in any broadcast week devote, in that broadcast 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 *Radio Regulations, 1986*.

3. The licensee shall make direct expenditures on Canadian talent development totalling a minimum of \$145,000 per year until the completion of the 2008-2009 broadcast year, allocated as follows:
 - \$45,000 to FACTOR
 - \$40,000 to the Canadian Association of Broadcasters’ Starmaker Fund;
 - \$30,000 to Canadian Music Week – for education and development of country music artists in Ontario; and
 - \$30,000 to Canadian Country Music Association (CCMA) – for new artist development and web site support.
4. Beginning in the 2007-2008 broadcast year, the licensee shall make a basic annual contribution to Canadian content development (CCD). The amount of the contribution shall be determined in accordance with the policy set out in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006, (Public Notice 2006-158) as amended from time to time.

The licensee shall allocate 60% of this basic annual CCD contribution to FACTOR or MUSICACTION.

The remainder of the annual basic contribution to CCD shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives in Public Notice 2006-158.

This condition of licence shall expire upon the coming into force of the amendments to the *Radio Regulations, 1986* relating to CCD.

Appendix 2 to Broadcasting Decision CRTC 2007-434

Terms and conditions of licence for CICX-FM Orillia

Terms

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

Conditions of licence

1. The licence shall be subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, with the exception of condition of licence number 5.
2. The licensee shall make a basic annual contribution to Canadian content development (CCD). The amount of the contribution shall be determined in accordance with the policy set out in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006 (Public Notice 2006-158), as amended from time to time.

The licensee shall allocate 60% of this basic annual CCD contribution to FACTOR or MUSICACTION.

The remainder of the annual basic contribution to CCD shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives in Public Notice 2006-158.

This condition of licence shall expire upon the coming into force of the amendments to the *Radio Regulations, 1986* relating to CCD.