Broadcasting Decision CRTC 2008-73

Ottawa, 31 March 2008

MZ Media Inc.
Toronto, Ontario

Application 2007-1532-8, received 30 November 2007
Public Hearing at Vancouver, British Columbia
25 February 2008

CHWO Toronto – Acquisition of assets

The Commission ***approves*** *the application by MZ Media Inc. to acquire from Primetime Radio Inc. the assets of the English-language radio programming undertaking CHWO Toronto and for a broadcasting licence to continue the operation of the undertaking. The terms and* ***conditions of licence*** *are set out in the appendix to this decision.*

The application

1. The Commission received an application by MZ Media Inc. (MZ Media) to acquire from Primetime Radio Inc. the assets of the English-language commercial AM radio programming undertaking CHWO Toronto and for a broadcasting licence to continue the operation of the undertaking under the same terms and conditions as those set out in the current licence and in Broadcasting Decision 2000-205.

2. The Commission received a comment in connection with this application from the Canadian Independent Record Production Association. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis

3. 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. Accordingly, the Commission has identified the following two issues to be addressed in its determinations:

   - Is the proposed value of the transaction for the purpose of calculating the tangible benefits reasonable and acceptable?

   - Is the proposed allocation of the tangible benefits package acceptable?

Is the proposed value of the transaction for the purpose of calculating the tangible benefits reasonable and acceptable?

4. The applicant submitted that the value of the transaction for the purpose of calculating the benefits is $7,320,433.

5. It is Commission practice to base the value of the transaction on the price agreed upon by the parties. Pursuant to the Asset Purchase Agreement (the Agreement), the purchase price will be the sum of the $7,320,433, the Pre-paid Expenses adjusted at closing, and the outstanding balance of the Transmitter Facilities Loan. As the purchase price includes the value of the Pre-paid Expenses and the Transmitter Facilities Loan, the Commission will include their value in its determination of the value of the transaction.

6. The applicant will also be assuming operating lease commitments for the lease of a transmitter site, which the Commission considers a financing alternative. As a financing alternative, the lease is considered as assumed debt and, in accordance with its practice, the Commission has also included this amount in the value of the transaction.

7. Finally, it is generally Commission practice to determine the value of the transaction at the date of the transaction. As the Agreement for the current transaction is dated 17 September 2007, the Commission considers that the values of the assets and liabilities presented in the financial statements for the broadcast year ended 31 August 2007 fairly represent the values of the assets and liabilities at the date of the transaction. As at 31 August 2007,

   - the value of the Pre-paid Expenses is $9,447;
   - the value of the Transmitter Facilities Loan as set out in section 3.4 of the Agreement is $486,530; and
   - the value of the assumed commitments for the operating lease is $616,956.

8. Consequently, to determine the value of the transaction, the Commission has added the total of the above three items ($1,112,933) to the amount of $7,320,433. As a result, the revised value of the transaction for the purpose of calculating the benefits is $8,433,366.

Is the proposed allocation of the tangible benefits package acceptable?

9. Consistent with the Commission’s tangible benefits policy outlined in Broadcasting Public Notice 2006-158, MZ Media proposed a tangible benefits package equal to 6% of the proposed $7,320,433 value of the transaction ($439,225). MZ Media proposed to allocate the following amounts over seven broadcast years:

   - $219,613, or 3% of the proposed value of the transaction, to the Radio Starmaker Fund;
   - $146,408, or 2% of the proposed value of the transaction, to FACTOR; and
   - $73,204, or 1% of the proposed value of the transaction, to the Music Theatre Performance program at The Sheridan Institute of Advanced Learning and Technology.

10. Given the Commission’s determination of the value of the transaction, the value of the tangible benefits package will increase to $506,002 (i.e. 6% of the revised amount of $8,433,366). The Commission expects that the revised benefits will be allocated in the same proportions proposed by the applicant over seven broadcast years, i.e.:

- $253,001, or 3% of the revised value of the transaction, to the Radio Starmaker Fund;
- $168,667, or 2% of the revised value of the transaction, to FACTOR; and
- $84,334, or 1% of the revised value of the transaction, to the Music Theatre Performance program at The Sheridan Institute of Advanced Learning and Technology.

Conclusion

11. In light of all of the above, the Commission **approves** the application by MZ Media Inc. to acquire from Primetime Radio Inc. the assets of the English-language AM radio programming undertaking CHWO Toronto and for a broadcasting licence to continue the operation of the undertaking.

12. Upon surrender of the current licence issued to Primetime Radio Inc., the Commission will issue a new licence to MZ Media Inc. The licence will expire on 31 August 2012, the current licence expiry date, and will be subject to the terms and **conditions** set out in the appendix to this decision. The Commission notes that the licensee will continue to operate under the “Oldies” condition of licence set out in Broadcasting Decision 2000-205. This condition allows for reduced weekly Canadian content levels.

Canadian content development

13. In Broadcasting Public Notice 2006-158 (the Commercial Radio Policy), the Commission set out a new approach to the development and promotion of Canadian artists. In order to reflect a new emphasis on development initiatives that lead to the creation of audio content for broadcast using Canadian resources, the Commission replaced the expression “Canadian talent development” (CTD) with “Canadian content development” (CCD). Under the new policy, each radio station holding a commercial radio licence is required to make a basic annual CCD contribution based on its total broadcast revenues in the previous broadcast year. This requirement will be reflected in the *Radio Regulations, 1986* (the Regulations). Until such time, it will be implemented by a transitional condition of licence, as set out in the appendix to this decision. This condition of licence will expire upon the coming into force of the amendments to the Regulations.

14. The Commission notes that pursuant to Broadcasting Decision 2006-425, which approved the acquisition of the assets of CHWO by Primetime Radio Inc., Primetime Radio Inc. was issued a broadcasting licence for the station under the same terms and conditions as those set out in Decision 2000-205, including the requirement to contribute, at a minimum, $36,000 to eligible CTD initiatives for each broadcast year of the licence term (2006-2012). The Commission notes that the transaction approved in Broadcasting Decision 2006-425 did not affect the control of the undertaking in question. The Commission has determined that MZ Media should be subject to the same terms and conditions as those imposed pursuant to Broadcasting Decision 2006-425 and set out in the current licence, which includes the condition relating to CTD. A **condition of licence** to this effect is set out in the appendix. Moreover, the Commission will expect the licensee to continue its contributions in a manner consistent with the eligibility criteria stated in the Commercial Radio Policy.

15. The Commission notes that under the previous CTD regime, all obligations with respect to CTD were imposed only by condition of licence. In the Commercial Radio Policy, the Commission stated that the new model would, as a transitional measure, allow for deductions of amounts contributed under these conditions of licence from the total amount contributable under the new model. This transitional measure is designed to facilitate the transition from the previous CTD regime to the new CCD regime for licensees subject to such conditions of licence and, in particular, to avoid licensees contributing twice, given that any conditions of licence imposed under the old policy will remain in effect. Therefore, should CHWO's revenues not exceed a threshold requiring basic annual CCD contributions in excess of the $36,000 in any given broadcast year, the licensee would not be expected to contribute any additional amount to CCD. Should station revenues increase to a point where the basic annual contribution would exceed $36,000, then the licensee would be expected to contribute additional funds to CCD in the manner prescribed in the Commercial Radio Policy.

Programming

16. The Commission notes the licensee's commitment to separate news facilities and a separate news focus for the station CHWO and its current undertaking CFMZ-FM Toronto. The Commission also notes other programming differences between the stations which will serve to distinguish CFMZ-FM and CHWO.

Secretary General

Related documents

- *CHWO and CHWO-DR-2 – Acquisition of assets*, Broadcasting Decision CRTC 2006-425, 28 August 2006

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

- *New "adult standards" AM radio station in Toronto*, Decision CRTC 2000-205, 16 June 2000

- *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999

This decision is to be appended to the licence. It 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 to Broadcasting Decision CRTC 2008-73

Terms, conditions of licence, encouragements and expectation

Terms

The licence will expire 31 August 2012.

Conditions of licence

1. The licence will 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*,

    a) in any broadcast week where at least 90% of musical selections from content category 2 that it broadcasts are selections released before 1 January 1981:

        i) in that broadcast week, excluding those periods referred to in paragraphs (b)(i) and (b)(ii), devote 30% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety; and

        ii) between 6 a.m. and 6 p.m., in the period beginning on Monday of that week and ending on Friday of the same broadcast week, excluding those periods referred to in paragraphs (b)(i) and (b)(ii), devote 30% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

    b) in those periods of category 2 music

        i) consisting exclusively of music composed before 1956, devote a weekly average of 2% or more of its musical selections from content category 2 broadcast during those periods to Canadian selections broadcast in their entirety;

        ii) consisting of 90% or more, but not exclusively, of music composed before 1956, devote a weekly average of 10% or more of its musical selections from content category 2 broadcast during those periods to Canadian selections broadcast in their entirety.

For purposes of this condition, the terms “broadcast week,” “content category” and “musical selection” shall have the meaning set out in section 2 of the *Radio Regulations, 1986*.

With regard to the above-noted condition of licence, whenever requested by the Commission to submit information concerning the station’s broadcasting of Canadian music, the licensee must ascertain the date of composition of the selections it broadcasts and it must identify the programming periods which include the broadcast of pre-1956 music and musical selections released before 1 January 1981 but after 1955.

3. The licensee shall expend the following tangible benefit amounts over seven broadcast years:

   - $253,001 to the Radio Starmaker Fund;
   - $168,667 to FACTOR; and
   - $84,334 to the Music Theatre Performance program at The Sheridan Institute of Advanced Learning and Technology.

4. Subject to condition of licence number 5 and 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, as amended from time to time (Broadcasting Public Notice 2006-158).

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

   The remainder of the annual basic contribution to CCD shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives in Broadcasting 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.

5. The licensee shall expend, at a minimum, an annual direct contribution to CCD of $36,000 for each broadcast year of the licence term. The Commission will expect the licensee to continue its contributions in a manner consistent with the eligibility criteria as stated in Broadcasting Public Notice 2006-158. For the sake of clarity, the licensee’s contribution under this condition satisfies its obligation to make a basic annual contribution to CCD pursuant to Broadcasting Public Notice 2006-158 in any broadcast year where the basic annual CCD contribution that the licensee would otherwise be required to make that year is $36,000 or less. In a broadcast year where the basic annual CCD contribution required to be made by the licensee exceeds $36,000, the licensee’s basic annual CCD contribution would equal the amount in excess of $36,000.

For the purposes of this condition, “expend” means actual cash outlay.

Encouragement

Employment equity

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Expectation

The Commission expects the licensee to meet its commitments to separate news facilities and a separate news focus for the station CHWO as compared to its current undertaking CFMZ-FM.