# Broadcasting Decision CRTC 2019-125

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Reference: 2018-424 and 2018-424-1

Ottawa, 30 April 2019

**Leclerc Communication inc.**
Québec and Montréal, Quebec

*Public record for these applications: 2018-0772-8 and 2018-0778-6*
*Public hearing in Québec, Quebec*
*20 February 2019*

## CHOI-FM Québec and CKLX-FM Montréal – Acquisition of assets and licence amendment

*The Commission* ***approves, subject to a condition****, an application by Leclerc Communication inc. (Leclerc) for authority to acquire from RNC MEDIA Inc. the assets of the French-language commercial radio stations CHOI-FM Québec and CKLX-FM Montréal, and for new broadcasting licences to continue the operation of these stations.*

*However, the Commission* ***denies*** *the exception to the Common Ownership Policy to allow Leclerc to hold three French-language FM radio stations in the Québec market. The Commission is of the view that Leclerc has not demonstrated convincingly and conclusively that the exception is justified, that it stems from exceptional circumstances or that it serves the public interest.*

*Accordingly, as a* ***condition of approval****, the Commission requires Leclerc to file, by no later than* ***30 May 2019****, a plan to comply with the Common Ownership Policy.*

*The Commission also* ***approves*** *Leclerc's application to amend CKLX-FM's conditions of licence to change the station's specialty spoken word format to a mainstream music format.*

### Applications

1. Leclerc Communication inc. (Leclerc) filed an application for authority to acquire from RNC MEDIA Inc. (RNC) the assets of the French-language commercial radio stations CHOI-FM Québec and CKLX-FM Montréal, and for new broadcasting licences to continue the operation of these stations.

2. Given that Leclerc currently operates two French-language commercial FM radio stations in the Québec radio market (CJEC-FM and CFEL-FM), the maximum number of radio stations allowed under the Common Ownership Policy, it must obtain an exception to that policy to acquire CHOI-FM.

3. Leclerc also filed an application to amend CKLX-FM’s conditions of licence to change the station’s specialty spoken word format to a mainstream music format.

4. Leclerc indicated that its applications are non-severable and added that it could not proceed with the acquisition of CHOI-FM and CKLX-FM without the Commission’s approval for each of its applications.

5. Jacques Leclerc owns 99.7% of the voting rights for Leclerc and exercises the effective control of the broadcasting undertakings. Nicolas Leclerc and Jean-François Leclerc each hold 0.15% of the voting rights.

6. RNC is wholly owned by Groupe Radio Nord inc. RNC is jointly controlled by Pierre R. Brosseau and Jean-Yves Gourd.

7. Leclerc would purchase the assets for $19,000,000, and the proposed value of the transaction is $20,077,579. The proposed tangible benefits represent 6% of the value of the transaction, which amounts to $1,204,655.

8. The Commission received 1,342 interventions regarding these applications, of which 1,315 are in support of the application and 22 are in opposition, including an online petition containing 1,025 signatories at the close of the intervention period. Among others, Martin Houde, Carl Girard and Guy Leduc, as well as Bell Media Inc. (Bell) filed interventions in opposition to the application. Cogeco Media Inc. (Cogeco), l’Association Québécoise de l’industrie du disque, du spectacle et de la vidéo (ADISQ), Genex Communications inc. (Genex), Gilles Lapointe et Nelson Sergerie, on behalf of a corporation to be incorporated (Lapointe-Sergerie) and Communications Lévis inc. (Communications Lévis) filed interventions in comment.

## Regulatory framework

9. Section 5(1) of the *Broadcasting Act* (the Act) confers upon the Commission the mandate to regulate and supervise all aspects of the Canadian broadcasting system to implement the Canadian broadcasting policy set out in section 3(1) of the Act. The review of ownership transactions in accordance with the public interest is an integral part of the Commission’s regulatory and supervisory mandate under the Act.

10. 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.

11. The Commission must consider each application on its merits, based on the circumstances specific to the application. In addition, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest as expressed in the objectives set out in section 3(1) of the Act.

## Commission's analysis and decisions

12. After examining the public record for these applications in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:

- the request for an exception to the Common Ownership Policy relating to the acquisition and operation of CHOI-FM Québec;
- the application to amend the broadcasting licence so that CKLX-FM Montréal can transition from a specialty spoken word station to a mainstream music station;
- the value of the transaction and the allocation of the tangible benefits; and
- the licence terms.

### Request for an exception to the Common Ownership Policy relating to the acquisition and operation of CHOI-FM Québec

13. The Common Ownership Policy[1] sets out that in markets with eight or more commercial stations operating in the same language, a person may be permitted to own or control as many as two stations in that language in the same frequency band, namely two AM stations and two FM stations.

14. Given that Leclerc currently operates two French-language commercial FM radio stations in the Québec radio market, the maximum allowed under the Common Ownership Policy, it requested an exception to that policy to acquire CHOI-FM.

15. Leclerc argued that the French-language radio industry in Quebec has unique attributes and differs in many ways from the radio industry in the rest of Canada. In this regard, Leclerc notes that it is impossible for a French-language broadcaster in Quebec to have more than two stations in a market because AM radio is no longer listened to in the French-language radio market in Quebec. Leclerc added that there is a competitive imbalance between small independent broadcasting companies and major broadcasters, such as Bell and Cogeco, which hold more than 80% of total revenues of the French-language broadcasting industry. Moreover, Leclerc argued that approval of the requested exception would breathe new life into the French-language radio market by enhancing the tool kit of an independent broadcaster that is subordinate to the business practices of these two giants.

16. Leclerc submitted that approval of the application would further the consolidation of a French-language independent broadcasting company, which would increase competition, not reduce it. By allowing a small independent player to expand its activities and increase its profitability, the Commission would modestly counterbalance Bell and Cogeco's

[1] As set out in Public Notice 1998-41, reiterated in Broadcasting Public Notices 2006-158 and 2008-4, and clarified in Broadcasting Information Bulletin 2010-341.

dominance in the French-language radio industry in Quebec. According to Leclerc, this would further a diversity of musical and editorial voices. Moreover, Leclerc alleged that the impact on the competition would be barely noticeable in the Québec market, but recognized that with the requested exception, it would dominate the market with a combined market share of 28.5%.[2]

17. Leclerc alleged that by approving the requested exception, the Commission would regulate French-language radio in Québec in a flexible manner, in accordance with section 5(2) of the Act. Further, Leclerc submitted that the exception would be consistent with the principles of the Common Ownership Policy and the Diversity of Voices Policy, would contribute to the objectives of the Canadian broadcasting policy and would serve the public interest.

18. According to Leclerc, the requested exception would serve the public interest by providing tangible and intangible benefits. Thus, Leclerc committed to contribute $1,204,655 in tangible benefits, the minimum requirement of 6% of the value of the transaction, consistent with Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy).

19. In regard to the intangible benefits, Leclerc proposed benefits regarding musical diversity, programming and information to warrant its requested exception. Specifically, Leclerc:

- committed to maintain predominantly musical programming (over 50%) during prime time for its two existing stations in Québec should its requested exception be approved;

- wished to create a distinct music format on CKLX-FM Montréal by devoting at least 25% of its French-language vocal music to emerging Canadian artists (as defined in Broadcasting Regulatory Policy 2011-316);

- wished to broadcast *La Scène WKND*, a one-hour program, every week day during prime time, simultaneously on CJEC-FM Québec and CKLX-FM Montréal, which would be devoted to promoting French-language music and emerging artists, and would invite 175 emerging artists over a seven-year period;

- committed to launch the program *L'artiste du mois WKND* for the benefit of emerging artists, which would consist of the broadcast of advertisements and teasers, interviews and social media posts, representing, according to Leclerc, a financial benefit of $588,000 over seven years, distributed between CJEC-FM and CKLX-FM (which would both be known by the name of WKND);

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[2] Leclerc's source: Numeris, Spring 2018, Mon-Sun, 5a-1a, T12+, Québec central market. Market share.

- committed to broadcast, in each broadcast week, four hours of local and regional news on CHOI-FM, including 20 minutes on weekends, and 2 hours and 30 minutes of news bulletins on CKLX-FM; and

- indicated that the acquisition of CKLX-FM would add a new editorial voice and newsroom in Montréal with the hiring of at least two journalists/hosts.

20. Leclerc added that an exception in the Québec market is necessary to allow it to make promotional and programming investments for CKLX-FM, which is operating at a deficit.

**Interventions**

21. ADISQ supported Leclerc's request for an exception. It considered that a stronger intermediate player specialized in French-language radio in an environment dominated by large horizontally and vertically integrated players would be beneficial for the radio market.

22. Cogeco submitted that the Commission should impose on Leclerc, as a condition of licence, a commitment to maintain music-based programming in prime time for its two existing stations in Québec, should its requested exception be approved.

23. For its part, Bell opposed the request for an exception on the basis that the acquisition of CHOI-FM would put Leclerc in a dominant position in the Québec market, thereby disrupting the existing competitive balance. Lapointe-Sergerie also shared this view. Further, Bell and Communications Lévis indicated that there are no exceptional circumstances to warrant the approval of the requested exception. According to Bell, Leclerc's request is based on a corporate strategy.

24. Lapointe-Sergerie, Communications Lévis and Genex submitted that if the Commission were to approve the acquisition of CHOI-FM, Leclerc should be required to sell one of its two radio stations in Québec to comply with the Common Ownership Policy.

**Leclerc's reply**

25. In reply to Bell's arguments regarding the competitive balance, Leclerc indicated that no rule or policy prevents one owner from owning the two most successful stations in a market. Leclerc added that even if the market shares would make it the most important broadcaster in Québec, it would remain an independent broadcaster with a very modest tuning share in the whole of the French-language market in the province.

**Commission's analysis and decision**

*Common Ownership Policy*

26. The Common Ownership Policy sets out that in a market like that in Québec, in which eight or more commercial stations operate in a given language, a person may be permitted to own or control as many as two AM and two FM stations in that language.[3]

27. In setting out this rule in its policy, the Commission sought to strike a reasonable and acceptable balance between preserving a diversity of news sources in a market and the benefits of increased ownership consolidation within the radio industry. The Commission has therefore sought to establish a model that provides for a certain degree of consolidation while taking into account its objective of preserving a diversity of voices and maintaining competition.

28. Pursuant to section 5(2) of the Act, the system's regulation and supervision should be flexible, should take into account regional needs and concerns of the different markets and should take into consideration the different conditions under which broadcasting undertakings that provide English- or French-language programming operate. It is the applicant's responsibility to demonstrate the specificities of a given market.

29. As indicated in Broadcasting Information Bulletin 2010-341, the Commission rarely grants exceptions to the Common Ownership Policy. Thus, in the past, the Commission has granted very few exceptions to the policy without the applicant having demonstrated an economic (e.g., adverse circumstances that threaten the survival of a radio station) or technical need (e.g., severe technical difficulties). These exceptions are rare and arise from exceptional circumstances where the applicants have demonstrated to the Commission that approval of their applications would be in the public interest and would contribute to meeting the various objectives of the Canadian broadcasting policy. However, as stated in Broadcasting Decision 2010-942, the Commission is of the view that it is the Commission's responsibility to analyze each requested exception based on the circumstances specific to that application.

*Québec radio market*

30. The Québec radio market currently consists of nine commercial FM radio stations (not including campus, community and religious stations), all of which are French-language stations. These stations are owned by five distinct ownership groups:

- Bell Media Inc.: CHIK-FM and CITF-FM
- Cogeco Media Inc.: CJMF-FM and CFOM-FM

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[3] In the case of an FM station, the *Radio Regulations, 1986* defines a market as the primary contour or the central area as defined by the Bureau of Broadcast Measurement (BBM, now known as Numeris), whichever is smaller.

- Leclerc Communication inc.: CJEC-FM and CFEL-FM
- RNC MEDIA Inc.: CHOI-FM and CHXX-FM
- Média ClassiQ inc.: CJSQ-FM

31. In 2018, Québec's commercial radio market generated $41.6 million in revenue, while posting a 17.5% profit before interest and taxes margin. The Commission notes that revenues and audience are evenly distributed among four ownership groups: Bell, Cogeco, Leclerc and RNC.

*Request for an exception to common ownership*

32. In the event of approval of the transaction as proposed, Leclerc would hold a total of three stations on the FM band in the Québec market (CJEC-FM, CFEL-FM and CHOI-FM).

33. Leclerc confirmed that its request for an exception to the Common Ownership Policy was not necessary for its economic viability. Further, according to the financial projections provided by Leclerc, the revenues of CJEC-FM and CFEL-FM would continue to increase with or without the acquisition of CHOI-FM.

34. Contrary to the market share data presented by Leclerc and its assumption that approval of the exception would be barely noticeable in the Québec market, the Commission considers that such an approval would create a competitive imbalance in this market and could have an undue impact on the existing licensees. The Commission also considers that granting such an exception would result in an increase of more than 90% in Leclerc's market share in audience and revenue in that market. This would allow Leclerc to dominate significantly in terms of revenue and tuning, breaking the market's existing competitive balance.

35. With respect to Leclerc's argument that the proposed tangible benefits partially justify the requested exception, the Commission notes that the percentage proposed by Leclerc is the minimum regulatory threshold required for all transactions involving commercial radio stations and does not represent an additional commitment allowing the recognition of the exceptional nature of the requested exception.

36. In Broadcasting Public Notice 2008-4 (the Diversity of Voices Policy), the Commission stated that the concept of diversity in the Canadian broadcasting system should be approached at three distinct levels: diversity of elements (public, private and community), plurality of editorial voices within the private element and diversity of programming.

37. The diversity of programming encompasses, among other things, the availability of differing genres and formats. To warrant the requested exception, Leclerc committed to maintain a predominantly music format during prime time on its CJEC-FM and CFEL-FM stations. According to Leclerc, this commitment would ensure a diversity of genres and formats in the Québec market and ensure that the two existing stations do not

compete with the predominantly spoken word station under acquisition (CHOI-FM). The Commission considers that since the Québec market already benefits from a diverse programming offering and that Leclerc's commitment is essentially equivalent to the status quo in that regard, this argument does not warrant approval of the requested exception.

38. An increase in ownership consolidation within the private element also raises preoccupations about reduced local representation, particularly as regards news coverage. Any benefits related to increased consolidation of undertakings should include improvements to the quality of the programming offered, including with respect to news and information programming offered at both the local and national level. In this regard, according to Leclerc, the provision of news on CHOI-FM and CKLX-FM is one of the intangible benefits that would warrant the requested exception. The Commission notes that neither CHOI-FM nor CKLX-FM currently offers news bulletins. Specifically, news on CHOI-FM is delivered in the form of dialogues between hosts and journalists, while CKLX-FM offers no news with its current 100% sports format. While the Commission views the proposed introduction of news to these markets favourably, it considers that the thresholds proposed by Leclerc in this case are not a significant benefit that would warrant the approval of the exception requested in the Québec market.

39. Moreover, when it examines applications for exceptions to the Common Ownership Policy, the Commission generally analyzes the benefits proposed in the market relevant to the requested exception (in this case, the Québec radio market). The Commission considers that the vast majority of the intangible benefits proposed by Leclerc would benefit mainly the Montréal market rather than the Québec market.

40. With respect to the broadcast of music and programs dedicated to emerging artists, while the Commission recognizes the benefits to the broadcasting system and the music industry, it considers that these benefits are also advantageous for Leclerc, which partly attributes the success of its format (WKND) to this type of music programming.

41. According to the Commission, the intangible benefits proposed by Leclerc in regard to music and news, namely, the hiring of general interest journalists and offering a music format similar to that of WKND in Québec, would be part of the ongoing business of a station that would transition from a 100% sports format to a mainstream music format.

42. With regards to Leclerc's argument that it needs the exception in the Québec market to compete with the integrated players in the province of Quebec, while the Commission recognizes the challenges of this situation, it considers that in the context of open competition, the players, whether large or small, must set themselves apart with different formats tailored to the various audiences in their respective markets. In this regard, Leclerc has been successful since arriving in the Québec market in 2012, without benefitting from exceptions to the Commission's policies.

43. The Commission considers that, despite the benefits proposed by Leclerc, the applicant has not demonstrated in a material manner that granting the exception in this case would serve the public interest and contribute to meeting the various objectives of the Canadian

broadcasting policy. The Commission considers that the requested exception is not warranted by an economic or technical need, or by exceptional circumstances. It considers rather that the requested exception is based on a business plan that would allow Leclerc to increase its profitability by acquiring the highest-rated station in the Québec market to invest in its station operating at a loss in Québec (CFEL-FM) and to allow for its expansion with the acquisition of CKLX-FM Montréal.

44. In light of the above, the Commission finds that Leclerc has not demonstrated in a material manner that the request for exception to the Common Ownership Policy is justified, that it stems from exceptional circumstances or that it serves the public interest.

45. Accordingly, the Commission **denies** the request for an exception to the Common Ownership Policy.

### Application to amend the broadcasting licence so that CKLX-FM Montréal can transition from a specialty spoken word station to a mainstream music station

46. Leclerc requested to amend CKLX-FM's conditions of licence to change the station's specialty spoken word format to a mainstream music format. While it does not have a specific condition of licence relating to the nature of the spoken word content, CKLX-FM is currently operated as a talk station devoted exclusively to sports.

47. Specifically, Leclerc requested the deletion of conditions of licence 3 and 4 set out in the appendix to Broadcasting Decision 2017-222, which read as follows:

> 3. The station shall be operated within the specialty format as defined in *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995, and in *Revised content categories and sub-categories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010.
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> 4. The licensee shall devote at least 50% of the programming broadcast each broadcast week to programs drawn from content category 1 (Spoken word).

48. As such, should the Commission approve the amendment, CKLX-FM would only be subject to the standard conditions of licence for commercial AM and FM radio stations, set out in Broadcasting Regulatory Policy 2009-62.

49. In support of its application for an amendment, Leclerc indicated that CKLX-FM's business model is not profitable in the short, medium or long term, and that it does not have the expertise to operate a sports station. It argued that the station has suffered considerable losses in recent years. Further, it submitted that Cogeco's spoken word station CHMP-FM, as well as ICI Radio-Canada Première, are well established in the Montréal market and that it is difficult for the station to stand out. Accordingly, Leclerc submitted that to acquire CKLX-FM and be economically viable, the Commission must approve the proposed change in format.

50. Leclerc proposed to offer a music format combining Alternative, Triple A (Adult Album Alternative) and Hot AC (Hot Adult Contemporary) genres. It intends to appeal to the

interests of adults aged 18-49. Leclerc indicated that the format would differentiate itself from that of the other stations in Montréal with its choice of songs and spoken word content.

### Interventions

51. ADISQ stated that the new format proposed by Leclerc would contribute to musical programming diversity in the Montréal market. However, to ensure that CKLX-FM's programming remains different, ADISQ recommended that the Commission impose a condition of licence requiring Leclerc to file an annual report on CKLX-FM's programming.

52. In addition, 1,315 interveners (members of the public, Québec entrepreneurs, industry artisans, artists and listeners of WKND in Québec) supported the proposed change in format. In particular, these interveners indicated that the music format proposed by Leclerc for CKLX-FM is absent from the Montréal market and that the change in format would contribute to the diversity of music programming.

53. The Commission received 22 interventions opposing the application for a change in format, including an online petition with 1,025 signatories as of the closing date of the intervention period. The interveners argued that it is important to maintain the only French-language 100% sports radio station in Montréal, and that there are too many music stations in this market. Some interveners pointed out that the change in format would result in the loss of the only French-language 100% sports station, while the Montréal market would still be served by an English-language station devoted entirely to sports. At the hearing, Martin Houde, Carl Girard and Guy Leduc stressed the distinct nature of CKLX-FM and the importance of maintaining an independent voice in the field of French-language sports radio.

### Leclerc's reply

54. In response to the opposing interventions, Leclerc indicated that the Montréal market is not saturated with stations with music formats, but that it needs musical diversity.

55. In regard to ADISQ's proposal concerning the filing of an annual return on programming, Leclerc indicated that it would prefer to adhere to a commitment between the two parties rather than a condition of licence.

### Commission's analysis and decision

56. In examining Leclerc's application, the Commission considered the issues of economic need raised in favour of changing the station's format, the impact of the proposed changes on licensed stations in Montréal, the diversity of voices and the diversity of programming, and the integrity of the licensing process.

#### *Economic need*

57. Although CKLX-FM's revenues increased between 2014 and 2018, the station suffered significant losses during the same period. The Commission notes that the sports format

typically results in higher programming expenditures than the mainstream format. Therefore, the Commission is of the view that Leclerc has demonstrated an economic need to warrant the proposed format change. Moreover, the Commission is of the view that the proposed format change would allow Leclerc, which would be a new independent player in the Montréal market, to have a better chance of achieving viability for CKLX-FM than with the current talk format, which is largely unprofitable.

*Impact of the proposed amendments on licensed radio stations in Montréal*

58. Leclerc provided financial projections for the operation of CKLX-FM. It anticipates average annual revenues over the next five years that are only 10% higher than the revenues of the station in 2018. The Commission considers that this increase in revenues does not represent a significant portion of the total revenues of Montréal's French-language radio market, which is dominated by Bell and Cogeco.

59. The Commission also considers that the distribution of revenues would not change significantly given that the number of players in the Montréal market would remain unchanged following the transaction. Further, no player in the market opposed the licence amendment application.

60. Accordingly, the Commission considers that approval of the licence amendment application would not have an undue impact on the licensed stations in Montréal.

*Diversity of voices and programming*

61. With respect to the diversity of voices, Leclerc's entry as a new player in the Montréal market would maintain a distinct radio voice in this market, since it would replace RNC, which currently operates only one station in Montréal.

62. As regards the numerous interventions in opposition to CKLX-FM's change in format, the Commission recognizes that the station's current format contributes to the diversity of programming in Montréal. However, the Commission notes that the station does not have a condition of licence requiring it to devote all of its programming to sports. In fact, it only has to ensure that over 50% of the programming is spoken word. As such, even if Leclerc kept the station's current conditions of licence, it would not be required to maintain its current predominantly spoken word format devoted to sports.

63. As noted by Messrs. Houde, Girard and Leduc, the programming currently offered by CKLX-FM is distinct in its content and the change in format would mean the loss of the only French-language radio station in Montréal whose programming is entirely dedicated to sports. However, Montréal listeners could continue to have access to French-language sports programming in this radio market, particularly through other radio stations offering sports content over the air and on other platforms.

64. While the Montréal market would see a reduction in spoken word content if the proposed format change were approved, the Commission is of the view that the diversity of music programming would be enhanced. Specifically, Leclerc's proposed format is not currently available in the Montréal market. Moreover, as Leclerc and ADISQ pointed out,

the programming proposed by Leclerc for the operation of CKLX-FM would provide exposure to many Francophone Canadian artists, particularly emerging artists. Consequently, the Commission considers that the music format proposed by Leclerc would contribute to the diversity of music programming in the Montréal market.

65. Finally, the Commission notes that Leclerc and ADISQ have reached an agreement regarding the filing of an annual report on CKLX-FM's programming to be filed with ADISQ. The Commission is satisfied with this agreement and considers that it would not be appropriate to impose a condition of licence requiring the filing of this report with the Commission.

*Integrity of the licensing process*

66. The Commission generally expects radio station licensees who are granted a licence through a competitive process to maintain their original conditions of licence, at least during the first licence term. Given that RCN obtained the broadcasting licence for CKLX-FM in 2003 (see Broadcasting Decision 2003-192) and that it has since honoured its programming commitments related to operating under a specialty format, the Commission is of the view that the approval of Leclerc's licence amendment application would not be harmful to the integrity of the licensing process.

67. In light of the above, the Commission **approves** Leclerc's application to delete CKLX-FM's conditions of licence 3 and 4 to change the station's specialty spoken word format to a mainstream music format.

## Value of the transaction and allocation of tangible benefits

68. The Commission's policy regarding tangible benefits is set out in Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy). In this policy, the Commission determined that it would be appropriate to require that tangible benefits generally be provided as part of a change in the effective control of all radio and television stations. For the purpose of calculating 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, 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 five years. These elements are then added to the purchase price, where applicable.

69. The purchase price of the stations' assets is $19,000,000. Leclerc proposed a value of the transaction of $20,077,579, which includes the assumed leases amounting to $1,077,579. The Commission considers that the proposed value of the transaction is consistent with the Tangible Benefits Policy.

70. Pursuant to the Tangible Benefits Policy, for commercial radio stations, tangible benefits must represent at least 6% of the value of the transaction as determined by the Commission, to be allocated to the Radio Starmaker Fund or Fonds Radiostar (3%), FACTOR or MUSICACTION (1.5%), any eligible Canadian content development

(CCD) initiative at the discretion of the purchaser (1%) and the Community Radio Fund of Canada (CRFC) (0.5%).

71. As mentioned above, Leclerc proposed a percentage of tangible benefits of 6%, the required minimum.

72. In accordance with the Tangible Benefits Policy, the Commission **directs** Leclerc to pay tangible benefits amounting to $1,204,655, to be allocated as follows in equal payments over seven consecutive broadcast years :

- 3% ($602,327) to Fonds Radiostar;
- 1.5% ($301,164) to MUSICACTION;
- 1% ($200,776) to eligible CCD initiatives; and
- 0.5% ($100,388) to the CRFC.

### Licence terms

73. Leclerc requested new broadcasting licences to continue operating CHOI-FM and CKLX-FM under the same terms and conditions as those in effect under the current licences. The licence for CHOI-FM would expire on 31 August 2020, while that for CKLX-FM would expire on 31 August 2024.

74. Since CHOI-FM’s last licence renewal in 2013 (see Broadcasting Decision 2013-517), the Canadian Broadcast Standards Council has received numerous complaints about CHOI-FM’s on-air content, which have been addressed in unfavourable decisions for the station. In this regard, Leclerc indicated at the hearing that it intended to have a rigorous code of conduct that would apply to all on-air staff.

75. The Commission finds it appropriate to harmonize the expiry dates for the licences of CHOI-FM and CKLX-FM to 31 August 2024 to review the renewal applications at the same time. The Commission will also have the opportunity to examine the quality of the programming offered on CHOI-FM under Leclerc management within a reasonable time frame.

## Conclusion

76. The Commission finds that approving the acquisition of the assets of CHOI-FM and CKLX-FM by Leclerc would be in the public interest, that the benefits flowing from the transaction are proportionate to the importance and nature of the transaction and that the application represents the best proposal in the circumstances. Specifically, this transaction would ensure the viability of CKLX-FM in Montréal and would contribute to the musical diversity through the proposed format, which has enabled Leclerc to be successful as a broadcaster and currently does not exist in this market. Finally, the transaction would provide tangible benefits of over $1,204,655 as well as intangible benefits. However, the applicant did not demonstrate in a material manner that the

exception to the Common Ownership Policy is justified, that it stems from exceptional circumstances or that it serves the public interest in the Québec radio market.

77. In light of all the above, the Commission **approves, subject to a condition**, the application by Leclerc Communication inc. for authority to acquire from RNC MEDIA Inc. the assets of the French-language commercial radio programming undertakings CHOI-FM Québec and CKLX-FM Montréal, Quebec. As a **condition of approval**, Leclerc must file, by no later than **30 May 2019**, a plan to comply with the Common Ownership Policy with regard to the Québec market.

78. The Commission also **approves** the application by Leclerc to delete CKLX-FM's conditions of licence relating to the specialty spoken word format so that the station can transition to a mainstream music format.

79. Upon surrender of the current licences issued to RNC, the Commission will issue new broadcasting licences to Leclerc. The terms and **conditions of licence** for the stations are set out in the appendices to this decision.

Secretary General

## Related documents

- *CKXO-FM Chibougamau and CKLX-FM Montréal – Licence renewals*, Broadcasting Decision CRTC 2017-222, 28 June 2017
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *CHOI-FM Québec – Licence renewal*, Broadcasting Decision CRTC 2013-517, 26 September 2013
- *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011
- *Transfer of effective control of various commercial radio programming undertakings from Corus Entertainment Inc. to Cogeco inc.*, Broadcasting Decision CRTC 2010-942, 17 December 2010
- *Revised guidelines for the application of the Common Ownership Policy for Radio*, Broadcasting Information Bulletin CRTC 2010-341, 4 June 2010
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009
- *Diversity of voices* – regulatory policy, Broadcasting Public Notice CRTC 2008-4, 15 January 2008

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

- *Commercial French-language specialty FM radio station in Montréal*, Broadcasting Decision CRTC 2003-192, 2 July 2003

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

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

# Appendix 1 to Broadcasting Decision CRTC 2019-125

## Terms, conditions of licence, expectation and encouragement for the French-language specialty commercial radio programming undertaking CHOI-FM Québec, Quebec

### Terms

The licence will expire 31 August 2024.

### Conditions of licence

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, with the exception of condition of licence 7, as well as to the conditions set out in the broadcasting licence for the undertaking.

2. The station shall be operated within the specialty format as defined in *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995, and in *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010.

3. The licensee shall devote more than 50% of programming broadcast each broadcast week to programming drawn from category 1 (Spoken Word).

### Expectation

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

### Encouragement

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.

# Appendix 2 to Broadcasting Decision CRTC 2019-125

## Terms, conditions of licence, expectation and encouragement for the French-language radio programming undertaking CKLX-FM Montréal, Quebec

### Terms

The licence will expire on 31 August 2024.

### Conditions of licence

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, as well as to the conditions set out in the broadcasting licence for the undertaking.

### Expectation

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

### Encouragement

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.