



## Broadcasting Decision CRTC 2006-135

Ottawa, 10 April 2006

**A. Fitzroy Gordon, on behalf of a corporation to be incorporated**  
Toronto, Ontario

*Application 2005-0745-2*

*Public Hearing in the National Capital Region*

*16 January 2006*

### English-language FM radio station in Toronto

*The Commission **approves in part** an application by A. Fitzroy Gordon, on behalf of a corporation to be incorporated (Gordon), for a broadcasting licence to operate an English-language, commercial specialty FM radio station in Toronto, Ontario. However, Gordon must, within three months of the date of this decision, submit for the Commission's approval, an application proposing the use of another frequency and technical parameters that are acceptable to the Commission and the Department of Industry for use in the Toronto market.*

### The application

1. The Commission received an application by A. Fitzroy Gordon, on behalf of a corporation to be incorporated (Gordon), for a broadcasting licence to operate an English-language commercial specialty FM radio programming undertaking at Toronto, Ontario. The station would operate at 98.7 MHz (channel 254B1) with an average effective radiated power of 508 watts.
2. Gordon is to be owned 45% by Burlingham Communications Inc. (Douglas Kirk) and 55% by Caribbean and African Radio Network Inc., which in turn, is to be held 70% by Global Communications International Inc. and 30% by Blythe Business and Consulting Inc. (Delford L. Blythe).
3. The proposed station would target the Caribbean and African communities in Toronto with a particular focus on World Beat and Non-classic religious music. The applicant indicated that the station would serve those communities through the promotion and coverage of local events, and by providing dialogue on issues of concern affecting those communities.
4. Spoken word programming would comprise 10% of all programming, and would include hourly newscasts. Featured programming would include discussions of health, lifestyle, investments, law, immigration, and women's issues. Another key component of the radio service would be programming that focuses on a range of topics of interest to youth. Sports news would focus on the coverage of cricket, soccer and track and field events.

5. Approximately 10% of all programming would consist of third-language news and entertainment features for listeners in the targeted communities with first languages other than English or French.
6. Gordon indicated that the proposed station would operate within the Specialty format with at least 50% of its weekly music to be drawn from subcategory 33 (World Beat and International). The proposed station's music would also feature Reggae, Soca, Calypso, Gospel, Zouk, Cadence and Seggae, a range that would cater to the tastes of the various Caribbean and African communities in Toronto.
7. The applicant indicated that it would not participate in the Canadian talent development (CTD) plan created by the Canadian Association of Broadcasters. Instead, Gordon proposed contributions amounting to \$294,000 to support CTD initiatives over a period of seven years. Annual expenditures would be at least \$36,000 in the first year following the commencement of operation, and would increase by \$2,000 each year, for a maximum expenditure of \$48,000 in the seventh year. The CTD budget in the first year of operation would be distributed as follows:
  - \$3,000 to FACTOR,
  - \$3,000 to the Canadian Association of Ethnic Broadcasters' catalogue of ethnic recordings, (in each of the first three years of operation only)
  - \$5,000 to the Afro-Caribbean Rhythm Festival,
  - \$4,000 to local club concerts,
  - \$4,000 for production of a compilation CD,
  - \$2,000 for two annual broadcast journalism scholarships,
  - \$6,000 to the Pan Afro Jazz Summer Series, and
  - \$9,000 towards a talent contest.
8. The applicant indicated that it would also support the above-noted projects by offering extensive artist and station promotion.

## **Interventions**

9. The Commission received a number of interventions in support of this application, as well as opposing interventions.
10. Harkanwal Thind opposed the Gordon application as well as other radio applications to serve Toronto submitted by Canadian Hellenic Toronto Radio Inc. (CHTR) and Rainbow Media Group Inc. (Rainbow), noting that the Commission was dealing with these applications without issuing a call for other applications to serve communities that are in greater need of radio service.

11. A joint intervention opposing the Gordon, CHTR and Rainbow applications for new Toronto radio stations was filed by CHUM Limited (CHUM), licensee of CHUM and CHUM-FM Toronto, and Rogers Broadcasting Limited (Rogers), licensee of CFTR, CJCL, CHFI-FM, and CJAQ-FM Toronto. The interveners submitted that none of these applications are consistent with the exceptions set out in *The Issuance of Calls for Radio Applications*, Public Notice CRTC 1999-111, 8 July 1999 (Public Notice 1999-111), where the Commission stated that applications for new radio licences would generally result in a call for other applications. In the interveners' view, the importance of respecting the guidelines set out in Public Notice 1999-111, thereby ensuring that the best possible proposals are considered, is magnified by the scarcity of vacant commercial radio frequencies in the Toronto market.
12. CHUM and Rogers recommended that, in the event that no call for applications was issued, conditions of licence should be imposed to ensure that any new station would provide diversity through the provision of a niche service, rather than one directed to a mainstream audience.
13. Milestone Radio Inc. (Milestone), licensee of CFXJ-FM Toronto (FLOW 93.5) also submitted an opposing intervention. Milestone noted the most serious impact of licensing the Gordon proposal would be felt by FLOW 93.5. Milestone expressed the opinion that the proposed service would be targeted to the primary audience already served by FLOW 93.5, namely the Black (including the Caribbean and African) community in Toronto. Additionally, Milestone asserted that its music programming along with the music broadcast on the three Toronto campus/community stations was already meeting the listening needs of the Black community. Milestone further expressed its concern with the Commission's decision to not issue a call for applications for new Toronto radio services.
14. The African Canadian Social Development Council (ACSDC) expressed its concern that the application did not adequately serve the radio and ownership interests of the Continental African Canadian community in Toronto. The ACSDC also indicated that approval of the Gordon application may preclude the future licensing of a radio service dedicated to the Continental African community in Toronto.
15. The Canadian Broadcasting Corporation (CBC) opposed the application based on technical grounds, stating that the applicant's proposal for the use of frequency 98.7 MHz (channel 254B1) in Toronto would be short-spaced with CBC's Radio One station CBLA-FM which operates on frequency 99.1 MHz (channel 256C1). According to the CBC, the situation would render the applicant's proposed frequency as technically mutually exclusive with the CBC's operation at 99.1 MHz. The CBC was of the view that the channel adjacency would not comply with the Department of Industry's (the Department) rules in respect of channel spacing regulations.

### **Applicant's reply**

16. In response to concerns regarding the absence of a radio call, the applicant submitted that the Commission's decision to proceed without a call was consistent with one of the exceptions announced by the Commission in Public Notice 1999-111. In particular, Gordon noted that, in Public Notice 1999-111, the Commission indicated that applications for low-power and other proposals with very little commercial potential would not generally trigger a call for competing applications.
17. With respect to concerns that its application had the potential to convert to a "mainstream station," Gordon indicated that its station would operate with a specific condition of licence requiring that at least 50% of the station's music would be drawn from World Beat and International selections. In the applicant's view, this requirement would serve to distinguish the station from other commercial radio services in Toronto, and ensure that its distinct music format is maintained.
18. Gordon also highlighted what it believes are the programming differences between its proposed service and the programming broadcast by Milestone's FLOW 93.5. The applicant disputed Milestone's claim that FLOW 93.5 serves the Toronto Caribbean and African communities. It stated that FLOW 93.5 markets itself as an "Urban and Hip Hop" service that caters to the younger Toronto audience. Gordon indicated that its proposed service would instead offer a range of programming including international news and sports, touching on topics and music styles not offered by FLOW 93.5. In addition, the imposition of a condition of licence requiring that at least 50% of the Gordon station's music would be dedicated to World Beat and International selections would distinguish it from what is offered by FLOW 93.5.
19. In reply to the ACSDC intervention, the applicant expressed its commitment to serve the entire African population of the Greater Toronto Area, regardless of geographic heritage.
20. With respect to the technical concerns expressed in the CBC intervention, Gordon indicated that its own engineer's findings are that the second-adjacent channel proposal would not cause any interference to the CBC operation at 99.1 MHz.

### **Commission's analysis and determination**

21. With respect to the Commission's decision not to issue a call for other applications, the Commission has considered the interventions as well as the applicant's reply and determined that it was appropriate to proceed with consideration of this application without issuing a call for further applications. In Public Notice 1999-111, the Commission listed a number of exceptions to its general policy of issuing calls for competing radio applications. One exception was for "low power and other proposals with very little commercial potential."

22. In 2005, the Toronto radio market generated total revenues of about \$242 million. The applicant projects total first-year revenues of \$1.2 million, rising to \$2.8 million by the seventh year of operation. The latter figure would amount to about 1.2% of the total revenues of the existing 25 Toronto commercial radio broadcasters during 2005.
23. Further, based on the information submitted in Gordon's application, it is reasonable to assume that the moderate levels of advertising revenue anticipated are achievable. Taking into account the size of the Toronto radio market and amount of advertising revenue that the proposed station is expected to generate, the Commission concludes that the proposed station would have very little commercial impact upon existing Toronto radio broadcasters.
24. Given the specialized nature of the proposed service and its limited commercial potential, as compared with other Toronto radio stations, the Commission finds that the Gordon application qualifies for one of the exceptions announced by the Commission in Public Notice 1999-111.
25. In its consideration of this application, the Commission noted the cultural and racial diversity to be added to the Toronto radio market through the establishment of a local radio service targeted entirely to the Caribbean and African communities.
26. The Commission also notes that the proposed spoken word programming would serve to highlight and strengthen the presence of these communities as vibrant and contributing members in Toronto by offering programs dedicated to their needs and interests.
27. The Commission notes that the applicant has proposed to include dialogue on social, religious, cultural and political issues of special interest to the Caribbean and African communities. The Commission reminds the applicant of the Commission's guidelines on religious programming as set out in *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993 (Public Notice 1993-78). The Commission considers that, if the applicant does offer religious programming as defined in Public Notice 1993-78, it must adhere to the guidelines set out in that public notice with respect to the provision of balance (section III.B.2.a)) and ethics (section IV). The Commission is imposing a **condition of licence** set out in the appendix to this decision, requiring that where the applicant does broadcast religious programming, it must adhere to those guidelines.
28. The proposed music format would offer a range of musical styles, with at least 50% of the station's music to be drawn from World Beat and International selections. The type of music offered would also serve to distinguish the station from programming that is currently available from existing local commercial radio services, and would ensure that the station will maintain its distinct music format.
29. The Commission further notes that the licensing of the proposed service would increase ownership diversity in the Canadian broadcasting system.

30. However, with respect to Gordon's technical proposal, the Department has advised that it does not permit the co-location of a station within the second-adjacent channel proximity of an existing authorized channel. This determination would prevent Gordon from operating at 98.7 MHz in Toronto.
31. Accordingly, the Commission **approves in part** the application by A. Fitzroy Gordon, on behalf of a corporation to be incorporated, for a broadcasting licence to operate an English-language, commercial specialty FM radio programming undertaking at Toronto, Ontario. However, the applicant's proposed use of frequency 98.7 MHz is **denied**.
32. The licence will expire 31 August 2012 and 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 conditions of licence 5 and 8. The licence will also be subject to the **conditions** set out in the appendix to this decision.

### **Issuance of the licence**

33. The Commission will only issue the licence, and the licence will only be effective at such time as:
  - 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,
  - The applicant submits, within three months of the date of this decision, an amendment to its application proposing the use of an FM frequency and technical parameters that are acceptable to both the Commission and the Department, and
  - Pursuant to section 22(1) of the *Broadcasting Act*, the Department notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.
34. Furthermore, the licence for this undertaking will only be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and, in any event, no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 10 April 2008. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

### **Other matters**

35. The Commission reminds the applicant that, before implementation of the undertaking, it must file an executed and signed copy of any other corporate document for which it has filed a draft only (for example, certificates and articles of incorporation, resolutions, by-laws, agreements.)

## Employment equity

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

Secretary General

*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 2006-135

### 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 conditions number 5 and 8.
2. The station shall be operated within the Specialty format defined in *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000, and in *A review of certain matters concerning radio*, Public Notice CRTC 1995-60, 21 April 1995, or as amended from time to time by the Commission.
3. During each broadcast week, at least 50% of all music broadcast shall be drawn from subcategory 33 (World Beat and International).
4. Upon commencement of operations, the licensee shall contribute an annual minimum of \$36,000 to the development and promotion of Canadian talent, and shall increase that amount by \$2,000 in each subsequent year. In the first year of operations, the budget shall be distributed as follows:
  - \$3,000 to FACTOR,
  - \$3,000 to the Canadian Association of Ethnic Broadcasters' catalogue of ethnic recordings, (in each of the first three years of operation only),
  - \$5,000 to the Afro-Caribbean Rhythm Festival,
  - \$4,000 to local club concerts,
  - \$4,000 for the production of a compilation CD,
  - \$2,000 for two annual broadcast journalism scholarships,
  - \$6,000 to the Pan Afro Jazz Summer Series, and
  - \$9,000 towards a talent contest.
5. Where the licensee broadcasts religious programming as defined in *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993, the licensee shall adhere to the guidelines set out in sections III.B.2.a) and IV. of that public notice with respect to the provision of balance and ethics in religious programming, as amended from time to time.