



## Broadcasting Decision CRTC 2010-972

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Route reference: 2010-715

Ottawa, 23 December 2010

**Rogers Broadcasting Limited**  
Edmonton, Alberta

*Application 2010-1192-3, received 27 July 2010*

*Public hearing in Gatineau, Quebec*

*26 November 2010*

### **CHBN-FM Edmonton – Acquisition of assets**

*The Commission **approves** the application by Rogers Broadcasting Limited for authority to acquire, from CTV Limited and Milestone Broadcasting (Edmonton) Limited, partners in a general partnership carrying on business as Edmonton Urban Partnership, the assets of the English-language commercial radio station CHBN-FM Edmonton and for a new broadcasting licence to continue the operation of the station. The terms and **conditions of licence** are set out in the appendix to this decision.*

*The Commission **directs** the licensee to fulfill the shortfall in CHBN-FM's Canadian talent development contributions for the 2006-2007, 2007-2008 and 2008-2009 broadcast years by no later than 31 August 2011.*

### **The application**

1. The Commission received an application by Rogers Broadcasting Limited (Rogers) for authority to acquire, from CTV Limited (CTV) and Milestone Media Broadcasting (Edmonton) Limited, partners (respectively 51% and 49%) in a general partnership carrying on business as Edmonton Urban Partnership (Urban Partnership), the assets of the radio programming undertaking CHBN-FM Edmonton, known as “The Bounce.” Rogers also requested a new broadcasting licence to continue the operation of the undertaking.
2. Rogers is controlled by Rogers Communications Inc., and Urban Partnership is legally controlled by CTVglobemedia Inc. The Commission notes that Milestone Media Broadcasting Ltd. is looking to step out of the broadcasting industry. In this regard, CTV Limited filed an application (application 2010-1191-5) for authority to acquire, from Milestone Radio Inc., their other indirectly held radio undertaking, CFXJ-FM Toronto that is also scheduled on this public hearing.

3. The Commission received interventions in support of this application. The interventions are available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Commission's analysis and determinations**

4. The Commission has identified the following issues to be addressed in its determinations:
  - Urban Partnership's compliance with its Canadian talent development (CTD) commitments through to 31 August 2009; and
  - the proposed tangible benefits package.

### **Compliance with Canadian Talent Development commitments**

5. CHBN-FM is subject to the following condition of licence, which is set out in Broadcasting Decision 2004-133:

In each year of the licence term, the licensee shall contribute \$571,429 to Canadian talent development (CTD) initiatives. These annual contributions shall be allocated as follows:

- \$192,858 to the Foundation to Assist Canadian Talent on Record (FACTOR), \$96,428 of which will be earmarked to support Alberta Urban music artists,
  - \$200,000 for a Quadruple Urban-Mix series,
  - \$50,000 for a national television showcase for Alberta Urban musicians,
  - \$50,000 for a CTD co-ordinator staff member,
  - \$20,000 for a series of summer concerts,
  - \$30,000 for live club concerts in Edmonton,
  - \$18,571 for a Canadian Urban music website separate from the station's own website,
  - \$10,000 for an education fund to support the study of broadcast journalism or music by Edmonton-based members of the designated groups (women, Aboriginal peoples, disabled persons and visible minorities).
6. In Broadcasting Notice of Consultation 2010-715, the Commission noted that Urban Partnership may have failed to contribute the total annual CTD amount required for the 2006-2007 and 2007-2008 broadcast years. Further, the Commission indicated that Urban Partnership may not have made the specific required contributions for each individual initiative set out in the condition of licence for the 2004-2005,

2005-2006, 2006-2007, 2007-2008 and 2008-2009 broadcast years. The Commission indicated that it had not yet received CHBN-FM's annual return for the 2009-2010 broadcast year.<sup>1</sup>

7. The Commission notes that, since the publication of the Commercial Radio Policy 2006 set out in Broadcasting Public Notice 2006-158, CTD is now known as Canadian Content Development (CCD). The Commission will use the term CCD throughout the remainder of this decision. CHBN-FM is required to expend its contributions to the specific CCD initiatives set out in the condition of licence. The failure of Urban Partnership to contribute its CCD funding at the levels required under its condition of licence to the third parties identified represents a situation of non-compliance. While overpayment for certain initiatives in specific broadcast years was achieved, many shortfalls to the annual contributions required by condition of licence were noted. In this regard, the Commission notes that Urban Partnership did not request an amendment to CHBN-FM's CCD condition of licence or inform the Commission that the station would not meet its specific CCD requirements during the licence term. It is recognized, however, that the licensee did expend in excess of the total required amount through to 31 August 2009. The required combined total through to 31 August 2009 is \$2,619,049, and the combined total spent by this date is \$2,753,157.
8. In Notice of Consultation 2010-715, the Commission noted that Urban Partnership may have also failed to contribute the total annual CCD amount required for the 2006-2007 and 2007-2008 broadcast years. Following the Commission's analysis relating to the eligibility of certain initiatives, it has been determined that the required total annual amount was not met for the 2008-2009 broadcast year as well. Urban Partnership has therefore failed to contribute the total annual CCD amount required for each of the 2006-2007, 2007-2008 and 2008-2009 broadcast years, resulting in a shortfall totalling \$96,668. Urban Partnership has also failed to make the specific required contributions to each of the third party initiatives set out in the condition of licence for the 2004-2005, 2005-2006, 2006-2007, 2007-2008 and 2008-2009 broadcast years, resulting in a shortfall totalling \$637,755.
9. The licence for CHBN-FM Edmonton was awarded as part of a competitive process in which contributions to CCD were considered. As part of its application to obtain the broadcasting licence, the licensee proposed both the amounts and the initiatives for CCD that were imposed in the condition of licence set out above. Furthermore, the licensee did not request an amendment to its condition of licence or inform the Commission that it would not meet its specific requirements during the licence term.
10. In a letter dated 21 September 2010, Rogers indicated that it was of the view that CHBN-FM has exceeded the total CCD contributions required to-date due to overpayments in the 2004-2005, 2005-2006 and 2009-2010 broadcast years. It

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<sup>1</sup> The Commission has since received the 2009-2010 annual return, but the information has not yet been reviewed.

acknowledged, however, that CHBN-FM had failed to meet its annual CCD contributions for the 2006-2007 and 2007-2008 broadcast years and to certain specific CCD initiatives over the licence term. It attributed these shortfalls to overspending on certain initiatives and the redirection of certain funds from one initiative to another. Rogers highlighted the fact that the contributions were directed to initiatives that promote Canadian urban artists.

11. Furthermore, Urban Partnership allocated CCD contributions to three initiatives that have been deemed ineligible by the Commission. Two events – “Stereos at Century” (Summer Concerts Series) and the “Pepper and Dylan Anniversary” (Live Club Concerts) – were limited to the station’s loyal listeners who qualified by calling in to the station.
12. The Commission also deems part of the expenses claimed for the “Bounce Birthday Bash” initiative to be ineligible. Urban Partnership indicated that revenues related to the “Bounce Birthday Bash” initiative were recorded separately and not netted against the expenses claimed as CCD expenditures for the 2005-2006, 2006-2007, 2007-2008 and 2008-2009 broadcast years.
13. In both of these cases, the Commission considers that these types of events would be ineligible for CCD contributions given their self-serving nature. It is of the view that the payments would be more appropriately considered as station promotion. These ineligible contributions also constitute non-compliance with the CCD regime criteria as set out in Broadcasting Public Notice 2006-158.
14. As a consequence of these CCD shortfalls, the Commission **directs** the licensee to fulfill the shortfall amount of \$96,668 for the 2006-2007, 2007-2008 and 2008-2009 broadcast years by no later than 31 August 2011.
15. The Commission reminds Rogers that it is also responsible for any CCD shortfalls incurred by Urban Partnership during the 2009-2010 broadcast year.

#### **Remaining CCD contributions**

16. Rogers indicated that it was willing to continue the condition of licence concerning the overall remaining CCD contributions, which were imposed for 7 years, until the end of the 2011-2012 broadcast year. However, Rogers did not wish to continue the specific third party initiatives to which the money is to be directed. It proposed instead to direct contributions to FACTOR and any remaining amounts to eligible CCD initiatives in support of Canadian urban artists.
17. The Commission notes that Urban Partnership expended \$535,635 during its first year of operations. The minimum required pro-rated amount was \$333,334, leaving a remaining portion of the required annual amount of \$35,794 to be paid over the commitment’s remaining two-year period. A condition of licence is set out in the appendix directing Rogers to expend the remaining amount.

18. The Commission **approves** the applicant's request to amend the condition of licence to remove the requirement to allocate contributions to specific third party initiatives but to continue the requirement for an annual contribution. The **conditions of licence** are set out in the appendix to this decision.

**The proposed tangible benefits package**

19. 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 (refer to Public Notice 1998-41 and Broadcasting Public Notice 2006-158).
20. The value of the transaction based on the Letter of Agreement is \$22 million. Based on its general practice, the Commission has reviewed the value of the transaction to determine if adjustments to the purchase price are required. Following its review, the Commission is satisfied that this amount fairly represents the value of the transaction.
21. Consistent with the Commission's tangible benefits policy set out in Broadcasting Public Notice 2006-158, Rogers proposed a tangible benefits package equal to 6% of the proposed \$22 million value of the transaction (\$1,320,000).
22. Additionally, in Broadcasting Regulatory Policy 2010-499, the Commission amended its approach to the allocation of tangible benefits. Accordingly, tangible benefits must be distributed as follows:
- 3% to the Radio Starmaker Fund or Fonds Radiostar
  - 1.5% to FACTOR or MUSICACTION;
  - 1% to a Canadian Content Development initiative, at the discretion of the purchaser;
  - 0.5% to the Community Radio Fund of Canada.
23. Accordingly, based on the new approach to allocating tangible benefits set out in Broadcasting Regulatory Policy 2010-499, the Commission **directs** Rogers to allocate its benefits contribution as follows over the course of seven consecutive broadcast years:
- \$660,000 to the Radiostarmaker Fund;
  - \$330,000 to FACTOR
  - \$220,000 to any of the above initiatives, to other Canadian Content Development initiatives, or to other eligible third parties; and
  - \$110,000 to the Community Radio Fund of Canada.

## Conclusion

24. The Commission **approves** the application by Rogers Broadcasting Limited for authorization to acquire from CTV Limited and Milestone Media Broadcasting (Edmonton) Limited, partners in a general partnership carrying on business as Edmonton Urban Partnership the assets of the radio programming undertaking CHBN-FM Edmonton. Upon surrender of the current licence, the Commission will issue a new licence to Rogers Broadcasting Limited under the terms and **conditions** set out in the appendix to this decision.
25. Further, in accordance with its practice regarding radio non-compliance set out in Circular No. 444, the Commission considers that a short-term licence period for CHBN-FM would be appropriate. This short-term licence period will enable the Commission to assess the licensee's compliance with the Regulations at an earlier date. Accordingly, the licence will expire 31 August 2014.

## Employment equity

26. Because the licensee is subject to the *Employment Equity Act* and file reports concerning employment equity with the department of Human Resources Skills Development Canada, its employment equity practices are not examined by the Commission.

Secretary General

## Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2010-715, 27 September 2010
- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Urban FM radio station in Edmonton*, Broadcasting Decision CRTC 2004-133, 5 April 2004
- *Practices regarding radio non-compliance*, Circular No. 444, 7 May 2001
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998

*\*This decision is to be appended to the licence.*

## **Appendix to Broadcasting Decision 2010-972**

### **Terms and conditions of licence for CHBN-FM Edmonton**

#### **Terms**

The licence will expire 31 August 2014.

#### **Conditions of licence**

1. The licence will be subject 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.
2. For the 2010-2011 broadcast year, the licensee shall devote a minimum of \$571,429 to eligible initiatives. These annual contributions shall be allocated as follows:
  - \$342,858 to FACTOR; and
  - \$228,571 to eligible initiatives supporting urban artists.
3. For the 2011-2012 broadcast year, the licensee shall devote a minimum of \$35,794 to eligible initiatives. These annual contributions shall be allocated as follows:
  - \$21,476 to FACTOR; and
  - \$14,318 to eligible initiatives supporting urban artists.
4. The licensee shall, as an exception to the requirements set out in subsection 2.2(8) of the *Radio Regulations, 1986* and subject to subsection 2.2(6) of these regulations, devote 40% or more of its musical selections from content category 2 to Canadian selections,
  - a) during the broadcast week, and
  - b) between 6:00 a.m. and 6:00 p.m., in any period beginning on a Monday and ending on Friday of the same week.