



Broadcasting Decision CRTC 2006-128

Ottawa, 5 April 2006

Rainbow Media Group Inc.
Toronto, Ontario

Application 2003-1912-0
Public Hearing in the National Capital Region
16 January 2006

English-language FM radio station in Toronto

*In this decision, the Commission **approves** an application by Rainbow Media Group Inc. for a broadcasting licence to operate a new English-language commercial FM radio station in Toronto, Ontario.*

The application

1. The Commission received an application by Rainbow Media Group Inc. (Rainbow) for a broadcasting licence to operate an English-language commercial FM radio programming undertaking at Toronto, Ontario. The station would operate at 103.9 MHz (channel 280A1) with an effective radiated power of 50 watts.
2. Rainbow is a corporation equally owned by CKMW Radio Ltd. (CKMW) and Mr. George Marchi. It is controlled by its Board of Directors pursuant to the terms of a Pre-Incorporation Shareholders' Agreement, dated 15 December 2003 (Shareholders' Agreement). CKMW is a wholly owned subsidiary of Evanov Radio Group Inc. (Evanov Group), a corporation controlled by Mr. William Evanov. Evanov Group owns and controls 100% of Dufferin Communications Inc. (Dufferin), licensee of CIDC-FM Orangeville. It also controls, directly or indirectly, a number of other radio undertakings in Ontario, namely CIAO Brampton and its transitional digital undertaking CIAO-DR-2, CKDX-FM Newmarket, CJWL-FM Ottawa, and in Nova Scotia, CKHZ-FM Halifax.
3. The frequency proposed for use by Rainbow entails a zone of interference with CIDC-FM, which uses the second adjacent channel to 280A1. As an existing operation, CIDC-FM has the right to veto all proposals which would cause such interference. When licensees exercise this right, the Department of Industry (the Department) does not issue certificates of technical acceptability. In this case, however, Mr. Evanov, who controls Dufferin, the licensee of CIDC-FM, accepts this zone of interference. The Department has indicated that it will issue a certificate of technical acceptability, conditional on certain issues being resolved, including the potential for interference to NAV/COM services in the area.

4. The proposed station would serve the gay and lesbian community of Toronto. Its spoken word programming, which would include news, publicity for daily events, and open-line programs, would reflect the interests, concerns, and activities of this community. Approximately 7 hours per week would be dedicated to newscasts and an additional 21 hours to talk and information programs.
5. The applicant indicated that it would establish an advisory committee of between 10 and 12 members “to ensure that the operations and services provided by Rainbow Radio are best suited to the interests and needs of the gay community in Canada” as well as the broader society of Canada. The advisory committee would make recommendations concerning programming policies and would participate in or oversee the handling of all complaints. The advisory committee members would each “have experience in broadcasting and in the handling of issues relevant to the gay culture and community.”
6. Rainbow also stated that it has developed guidelines that will ensure balance and high standards in its open-line and interactive programs, and that will ensure the absence of abusive language.
7. During the daytime, the proposed station would feature a mix of Top Forty music, pop, and classic hits from the 1970s, 1980s, and 1990s. In the evenings and on weekends dance music, Rhythm and blues, club mixes, easy listening, contemporary jazz, Latin beat and world music would also be offered. The applicant indicated that during the broadcast day and between 6:00 a.m. and 6:00 p.m. on weekdays it would devote 40% of all music drawn from category 2 (popular music) to Canadian selections. This level would exceed the minimum level of 35% required by the *Radio Regulations, 1986*.
8. The applicant indicated that it would not participate in the Canadian talent development (CTD) plan created by the Canadian Association of Broadcasters. Instead, Rainbow proposed an independent CTD plan with several components. In each broadcast year, a \$5,000 scholarship for journalism, artistic, or music studies would be awarded by both the School of Media Studies at Humber College and the School of Journalism at Carleton University. An annual expenditure of \$30,000 would be made for musical artists to be showcased at the Pride Week celebrations. Rainbow would fund workshops and seminars at Canadian Music Week, at a cost of \$10,000 per year during the first four years of the licence term, and \$20,000 in each subsequent year. Rainbow would also fund a gay community showcase and art exhibit, beginning in the fifth year of the licence term, at a cost of \$40,000 in that year and in each subsequent year.
9. Rainbow projects that its proposed station would generate advertising revenues amounting to \$1.3 million in the first year of a seven-year licence term, increasing to \$2.9 million by the seventh year. Rainbow stated that there are a large number of diverse advertisers that currently target the Lesbian/Gay/Bisexual/Transsexual market, and that many of these advertisers are currently not advertising on radio. Rainbow stated that advertiser support has been offered by local businesses and by large national clients that believe they would be well served by a targeted local broadcaster.

Interventions

10. The Commission received numerous interventions in support of this application as well as opposing interventions.
11. Harkanwal Thind opposed the Rainbow application as well as other radio applications to serve Toronto submitted by A. Fitzroy Gordon, on behalf of a corporation to be incorporated, and Canadian Hellenic Toronto Radio Inc., 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.
12. Eric Cartman pointed out that FM frequencies in Toronto are scarce, and that a call for other applications should have been issued. He also expressed the opinion that radio licences should not be granted on the basis of sexual practices.
13. Maureen Moss expressed the view that the music mix proposed by Rainbow is no different from that offered by existing radio stations.
14. A joint intervention opposing all of the 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.
15. CHUM and Rogers recommended that, in the event that no call for applications was made, 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. In the case of Rainbow, CHUM and Rogers pointed out that Rainbow had not proposed any limits on the types of music it would offer, leading to the possibility that the station could compete with existing stations to attract mainstream listeners.

Applicant's reply

16. The applicant did not respond to the interventions filed by Harkanwal Thind, Maureen Moss, and Eric Cartman.
17. In its reply to the joint CHUM and Rogers intervention, Rainbow pointed out that, due to CKMW's right to veto any proposal to broadcast on 103.9 MHz that would cause interference to CIDC-FM, a call for applications to use this frequency would not have been successful and would have therefore been a misuse of the public process. In the

applicant's view, the Rainbow proposal is a creative way to serve the gay and lesbian community without reducing the number of frequencies available to other potential applicants.

18. With respect to the proposed station's ability to compete for a general audience, Rainbow pointed out that, unlike most Toronto mainstream stations, its 3 mV/m signal will reach only 14% of the population of the Toronto central market area. Of this, only a fraction would represent the station's target audience in the gay and lesbian community. In Toronto, with many stations covering the entire market, Rainbow indicated that the proposed station would have very little commercial potential, and would therefore qualify as an exception under the Commission's practices regarding calls for applications, even if CKMW had no veto rights due to potential interference.
19. In Rainbow's view, the 50 watt signal of the proposed station would ensure that such a station would only be viable through serving a small but cohesive audience.

Commission's analysis and determination

20. 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."
21. In 2005, the Toronto radio market generated total revenues of about \$242 million. The Commission notes the applicant's limited coverage of the Toronto area, as Rainbow's response to the intervention pointed out, and that the applicant projects total first-year revenues of \$1.3 million, rising to \$2.9 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.
22. Further, based on the information submitted in Rainbow'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.
23. Given the specialized nature of the proposed service and its limited commercial potential, as compared with other Toronto stations, the Commission finds that the Rainbow application qualifies as one of the exceptions announced by the Commission in Public Notice 1999-111.

24. Moreover, the Commission considers that Rainbow has proposed a sound business plan, based on providing radio programming currently unavailable in Toronto, and that reflects the particular concerns and activities of a target audience.
25. The Commission notes Rainbow's plans for an Advisory Board which would meet at least twice each year. The Advisory Board would be chaired by the General Manager of the proposed station, although no other member of the Advisory Board would have any connection to Rainbow. The Advisory Board would review all complaints, and the manner in which each was resolved. The applicant also indicated that minutes of Advisory Board meetings would be made available to the Commission upon request.
26. The Commission also notes the applicant's plans for spoken word programming, its commitment to the broadcast of Canadian musical selections that exceeds the regulatory minimum, and its plans for the development of Canadian talent.
27. In making its decision, the Commission notes that the licensing of this proposal would not reduce the number of frequencies that might be available on the FM band for other applicants wishing to serve Toronto.
28. The Commission also notes the applicant's plans for the development of Canadian talent. A **condition of licence** is set out in the appendix to this decision requiring the applicant to adhere to the above noted minimum annual financial contributions to CTD following the commencement of operation. The Commission notes that the applicant has proposed to contribute a total of \$500,000 over a period of seven consecutive broadcast years and will expect the applicant to fulfill this total commitment over such a period.
29. Accordingly, the Commission **approves** the application by the Rainbow Media Group Inc. for a broadcasting license to operate an English-language commercial FM radio programming undertaking in Toronto.
30. In line with the applicant's proposal, the Commission expects that spoken word programming, including newscasts, open-line and discussion programs, and promotion of local events and activities, will consistently incorporate material of direct and particular relevance to the gay and lesbian community, and reflect its perspective and its particular needs and interests.
31. The Commission notes that, pursuant to sections 4.1(b)(i) and 4.1(b)(ii) of the Shareholders' Agreement, Mr. George Marchi and CKMW may designate other members of their respective group as the holder of the shares initially allocated to them. The Commission reminds the applicant that should these options be exercised, they will be subject to section 11(4) of the *Radio Regulations, 1986*.
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 condition of licence number 5. The licence will also be subject to the **conditions** set out in the appendix to this decision.

Issuance of the licence

33. The Department has advised the Commission that, while this application is conditionally technically acceptable, it will only issue a broadcasting certificate when it has determined that the proposed technical parameters will not create any unacceptable interference with aeronautical NAV/COM services.
34. The Commission reminds the applicant that, pursuant to section 22(1) of the *Broadcasting Act*, no licence may be issued until the Department notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.
35. Furthermore, the licence for this undertaking will 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 5 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

36. The Commission reminds the applicant that, before implementation of the station, it must file a signed and executed copy of the Shareholders' Agreement, and a revised Board of directors (pursuant to Section 6.1 of the Shareholders' Agreement).

Employment equity

37. 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 2006-128

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 number 5.
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in section 2.2(8) of the *Radio Regulations, 1986* (the Regulations), in any broadcast week:
 - a) 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; and
 - b) devote, between 6:00 a.m. and 6:00 p.m., in the period from Monday to Friday of the same 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 Regulations.

3. The licensee shall contribute a minimum of \$5,000 in each broadcast year for a scholarship in journalism, artistic, or music studies at the School of Media Studies at Humber College, and \$5,000 in each broadcast year for a scholarship to the School of Journalism at Carleton University.
4. The licensee shall contribute a minimum of \$30,000 in each broadcast year to payments to musical artists showcased at the Pride Week celebrations.
5. In each of the first four broadcast years, the licensee shall contribute a minimum of \$10,000 to fund workshops and seminars for musical artists at Canadian Music Week. In the fifth broadcast year and in each subsequent broadcast year the licensee shall contribute \$20,000 for this purpose.
6. In the fifth broadcast year, and in each subsequent broadcast year, the licensee shall contribute \$40,000 to artists for their participation in a gay community showcase and art exhibit.