



Broadcasting Decision CRTC 2008-72

Ottawa, 31 March 2008

Rogers Broadcasting Limited

Vancouver and Victoria, British Columbia

Application 2007-1312-4, received 17 September 2007

Public Hearing at Vancouver, British Columbia

26 February 2008

Acquisition of assets – CHNM-TV and CHNM-DT Vancouver and their transmitters in Victoria

*The Commission **approves**, subject to the **condition of approval** set out in Appendix 2 of this decision, the application by Rogers Broadcasting Limited (Rogers) to acquire the assets of the ethnic television programming undertaking CHNM-TV Vancouver (also known as Channel M), the digital television undertaking CHNM-DT Vancouver and their related transmitters in Victoria from Multivan Broadcast Corporation (the general partner) and Art Reitmayer, Douglas M. Holtby, Geoffrey Y.W. Lau, Robert H. Lee, Joseph Segal and Mainstream Broadcasting Corporation (the limited partners), carrying on business as Multivan Broadcast Limited Partnership. The Commission also **approves** Rogers' request for licences to continue the operation of the undertakings. The terms and conditions of licence are set out in Appendix 1 to this decision.*

The application

1. The Commission received an application by Rogers Broadcasting Limited (Rogers) to acquire the assets of the ethnic television programming undertaking CHNM-TV Vancouver (also known as Channel M), the digital television undertaking CHNM-DT Vancouver and their related transmitters in Victoria from Multivan Broadcast Corporation (the general partner) and Art Reitmayer, Douglas M. Holtby, Geoffrey Y.W. Lau, Robert H. Lee, Joseph Segal and Mainstream Broadcasting Corporation (the limited partners), carrying on business as Multivan Broadcast Limited Partnership (Multivan). The applicant also requested licences to continue the operation of the undertakings.

The proceeding

2. The Commission received written interventions in connection with this application, and numerous parties made presentations at the oral phase of the public hearing. The Commission has carefully reviewed and considered the submissions of all parties. The public record of this proceeding, which includes interventions in support of, in opposition to, and commenting on the application, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

3. The Commission has identified the following four issues to be addressed in its determinations:

- the sale of CHNM-TV within its first licence term;
- whether Rogers' proposed acquisition of CHNM-TV is in compliance with the Common Ownership Policy;
- the assessment of the value of the transaction; and
- the assessment of the proposed tangible benefits package.

Sale of CHNM-TV within its first licence term

4. The Commission is generally concerned when broadcasting undertakings are put up for sale within their first licence term. Such transactions raise issues relating to the integrity of the licensing process and the potential gain to the vendor.

5. In Broadcasting Notice of Public Hearing 2007-18-4, the Commission noted that Multivan was granted authority to operate a new multilingual ethnic television station to serve Vancouver in Broadcasting Decision 2002-39 and that consequently the proposed transaction would occur within its first licence term. When examining such transactions, the Commission is concerned with the following two areas:

- the integrity of the licensing process; and
- the potential gain to the vendor.

Integrity of the licensing process

6. In Broadcasting Decision 2002-39, the Commission approved an application by Multivan for a new ethnic television station in Vancouver based on the following factors:

- the station would be owned by local investors of ethnic origin with strong broadcasting, business and community backgrounds;
- the station would contribute to the community through the broadcast of diverse programming for and by Vancouver's ethnic communities, would enjoy the support and participation of an advisory board made up of local residents, and consequently would contribute to a diversity of voices in over-the-air television stations; and
- the strong support for the Multivan application expressed in interventions from a wide range of ethnic communities, producers and community groups in Vancouver.

7. Multivan indicated that although it invested significant time, effort and resources to reach its objective of launching the station and fulfilling the commitments made in its application by providing a reflective and informative ethnic television service with local newscasts, cultural magazine programs and special programming initiatives, the Canadian television landscape has changed in the interim. Specifically, Multivan noted that it is now competing with three large players, each with multiple broadcast outlets, namely CTVglobemedia (CTVgm), Global Television Network Inc. (Global) and Rogers. Multivan submitted that these major broadcasters can benefit from significant opportunities for synergies and are better positioned to purchase national rights. In this respect, Multivan pointed to the competing applications by Rogers and itself for ethnic television stations in Calgary and Edmonton, indicating that, like Rogers, it had recognized the need to expand into other local markets to take advantage of efficiencies.
8. The Commission notes that CHNM-TV started operations on 27 June 2003. The Commission further notes that Multivan did try to expand its service by applying for new ethnic stations in Alberta but its applications were not successful. Thus, the Commission is of the view that Multivan did attempt to implement its authority in accordance with its commitments but that, given the circumstances in the Vancouver market, it was difficult for Multivan to continue to meet its commitments without being able to obtain synergies from other stations.
9. For its part, Rogers indicated that even before the licensing of CHNM-TV to Multivan, it was well aware of the need for a new local ethnic station in Vancouver, noting that it had filed applications for a new local ethnic station in Vancouver on numerous occasions and that these applications triggered calls for other applications and public hearings, but that in each case its applications for a new ethnic station resulted in the licensing of more English-language stations. Rogers noted that it was only after its third attempt that a local ethnic station was licensed, albeit to Multivan and not to Rogers.
10. The Commission notes that Rogers has committed to maintaining Multivan's commitment to local programming and local service and that it intends to make considerable investments to achieve self-sustainability. Further, the Commission considers that Rogers will benefit from being able to achieve some synergies with its OMNI stations in Ontario and Alberta and be in a better position to compete with over-the-air broadcasters such as CTVgm and Global.

Conclusion

11. In light of all of the above, the Commission is satisfied that the integrity of the licensing process would not be compromised by approval of the proposed transaction.

Potential gain to the vendor

12. Where an undertaking is sold within the first licence term, the Commission examines the investment that the vendor has made in the undertaking for the purpose of determining the profit resulting from the sale.
13. At the hearing, Multivan and Rogers submitted that given the significant capital investment required to launch the service and the risk incurred in doing so, the profit was not unreasonable but rather commensurate with the risk. Both parties underscored that the licensee had met its promises and commitments, including its broad service requirement.

Conclusion

14. In light of the above and based on financial evidence provided by the applicant, the Commission is satisfied that the vendor, Multivan, does not stand to realize an unreasonable financial gain from the sale of the undertakings.
15. As noted above, the Commission is concerned when broadcasting undertakings are put up for sale within the first licence term or shortly after a previous sale. Accordingly, the Commission will continue to examine such transactions carefully to ensure that there is no potential for licence trafficking.

Compliance of Rogers' proposed acquisition of CHNM-TV with the Common Ownership Policy

16. In Broadcasting Public Notice 2008-4, the Commission reaffirmed the Common Ownership Policy for over-the-air (OTA) television set out in Public Notice 1999-97 (the 1999 Television Policy). Under this policy, the Commission permits ownership by one person of no more than one conventional television station in one language in each market except under the special circumstances set out in Broadcasting Public Notice 2008-4. The policy is designed to ensure that a diversity of voices exists in a given market and to maintain competition in each market.
17. In Broadcasting Decision 2002-82, the Commission approved an application by Rogers to establish a new ethnic television station in Toronto, even though Rogers was the licensee of an existing multilingual television station in that market. In that decision, the Commission determined that because the majority of the programming offered by the two ethnic stations would be presented in different languages, Rogers' ownership of two ethnic stations in Toronto was not inconsistent with its one-station-per-market policy.

18. In Broadcasting Decision 2007-360, the Commission approved Rogers' acquisition of Citytv stations in Calgary, Edmonton, Toronto, Vancouver and Winnipeg. In that decision, the issue was not whether Rogers' proposed ownership of both the Citytv conventional and the OMNI ethnic television stations in Calgary, Edmonton and Toronto would be in contravention of the Common Ownership Policy. Rather, it was Rogers' ownership of its religious stations in Vancouver and Winnipeg and its proposed ownership of Citytv stations in the same markets that was deemed contrary to the policy. In light of the commitment made by Rogers to divest the religious stations, the Commission was satisfied that the proposed acquisition of the Citytv stations in Winnipeg and Vancouver was consistent with the Common Ownership Policy.
19. In the present case, the Commission notes that the proposed acquisition would result in Rogers' owning an English-language station (Citytv) and an ethnic station (CHNM-TV) in Vancouver and as such would be in accordance with its Common Ownership Policy as set out in the above-noted decisions and in Broadcasting Public Notice 2008-4. Further, as it did in the case of the acquisition from CHUM Television Vancouver Inc. of the assets of the five Citytv stations approved in Broadcasting Decision 2007-360, Rogers proposed to adhere to conditions of licence requiring that not more than 10% of programming on the two stations be broadcast by both stations and that there be no overlap of third-language ethnic programming on the two stations in any given broadcast year.
20. Rogers also committed to maintaining the independent management of the news departments of CHNM-TV and Citytv Vancouver and separate presentation structures, including journalists and producers. The Commission expects Rogers to fulfil this commitment.
21. In Broadcasting Public Notice 2008-4, the Commission also stated that it will not approve applications for a change in effective control resulting in the control by one person of a dominant position in the delivery of television services to Canadians that would impact on the diversity of programming available to television audiences. However, the Commission indicated that barring other policy concerns, it would process expeditiously transactions that would result in the control by one person of less than 35% of the total television audience share, including audiences to both discretionary and OTA services.
22. Given Rogers' relatively modest OTA and discretionary holdings, the Commission is satisfied that this acquisition would not result in Rogers' controlling more than 35% of the total television audience share.

Assessment of the value of the transaction

23. 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.

24. The applicant submitted that the value of the transaction for the purpose of calculating the benefits is \$60 million, which, plus or minus adjustment at closing for variations in working capital, is the purchase price for the purchased assets as set out in the purchase agreement.
25. Commission practice is generally to determine the value of the transaction at the date of the transaction. As the agreement for the current transaction is dated 22 June 2007, the Commission considers that the values at the end of the broadcast year (i.e. on 31 August 2007) fairly represent the values as at the date of the transaction.
26. In addition to the assets being purchased, Rogers will also be assuming the operating lease commitments which, as at 31 August 2007, amounted to \$1,291,913. In accordance with its practice, the Commission will include this amount in the value of the transaction.
27. Consequently, the Commission's revised value of the transaction for the purpose of calculating the benefits is \$61,291,913.

Assessment of the proposed tangible benefits package

28. The Commission generally expects applicants to make commitments to clear and unequivocal benefits representing a financial contribution of 10% of the value of the transaction, as accepted by the Commission for television undertakings in the 1999 Television Policy and maintained in Broadcasting Public Notice 2007-53. Such benefits should be directed to the communities served and to the broadcasting system as a whole.
29. Rogers proposed tangible benefits valued at \$6 million, to be allocated as follows:
 - Channel M Independent Producers Initiative – \$4 million;
 - Channel M News Bureau in Victoria – \$1 million; and
 - University of British Columbia Multicultural Film Production Program – \$1 million.
30. In addition, Rogers committed to allocate, by the end of CHNM-TV's licence term, the following amounts to meet the undertaking's outstanding funding commitments, as set out in Broadcasting Decision 2002-39:
 - \$1,584,253 to independent production initiatives;
 - \$644,500 to script and concept development; and
 - \$89,000 to scholarship initiatives.
31. The Commission is satisfied with the applicant's commitments to benefits that will be invested in new programming and social issues that are consistent with Commission regulations. **Conditions of licence** reflecting these commitments are set out in Appendix 1 of this decision.

32. However, as noted above, the Commission has determined that the revised value of the transaction is \$61,291,913. Rogers had determined the value of the assets as \$60 million for the purpose of calculating the value of the tangible benefits package associated with this transaction. The difference between the Commission's and Rogers' valuation is \$1,291,913. Therefore, the value of the outstanding tangible benefits is \$129,191 (considering that the Commission usually bases its calculation on 10% of the value of the transaction). Accordingly, as a **condition of approval**, the Commission requires Rogers to file, within 30 days of the date of this decision, a plan for allocating the \$129,000 (rounded) in additional benefits that is acceptable to the Commission and that reflects the value of the transaction, as determined by the Commission in this decision.
33. Further, with respect to those proposed tangible benefits which it has been given approval to self-administer, Rogers is reminded that the Commission considers that it is inappropriate for any administrative fees to be charged when approval has been given to a licensee to self-administer benefit spending. Accordingly, no administrative fees may be charged by Rogers.

Commission's determination

34. Based on all of the above, Commission **approves**, subject to the **condition of approval** set out in Appendix 2 of this decision, the application by Rogers Broadcasting Limited to acquire the assets of the ethnic television programming undertaking CHNM-TV Vancouver, the digital television undertaking CHNM-DT Vancouver and their related transmitters in Victoria from Multivan Broadcast Corporation (the general partner) and Art Reitmayer, Douglas M. Holtby, Geoffrey Y.W. Lau, Robert H. Lee, Joseph Segal and Mainstream Broadcasting Corporation (the limited partners), carrying on business as Multivan Broadcast Limited Partnership, and for licences to continue the operation of the undertakings. The terms and **conditions of licence** are set out in Appendix 1 of this decision. The licences will expire 31 August 2009, the current licence expiry date.

Employment equity

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

Secretary General

Related documents

- Broadcasting Notice of Public Hearing CRTC 2007-18-4, 18 January 2008
- *Diversity of voices* – Regulatory policy, Broadcasting Public Notice CRTC 2008-4, 15 January 2008

- *Transfer of effective control of 1708487 Ontario Inc., 1738700 Ontario Inc. and CHUM Television Vancouver Inc. to Rogers Media Inc.*, Broadcasting Decision CRTC 2007-360, 28 September 2007
- *Ethnic television stations in Calgary and Edmonton*, Broadcasting Decision CRTC 2007-166, 8 June 2007
- *New multilingual ethnic television station to serve Toronto*, Broadcasting Decision CRTC 2002-82, 8 April 2002
- *New multilingual ethnic television station to serve Vancouver*, Broadcasting Decision CRTC 2002-39, 14 February 2002
- *An ethnic television programming undertaking to serve Vancouver, British Columbia*, Public Notice CRTC 2001-32, 28 February 2001
- *Report to the Governor in Council on the earliest possible establishment of over-the-air television services that reflect and meet the needs of the multicultural, multilingual and multiracial population of the Greater Vancouver Area*, Public Notice CRTC 2001-31, 28 February 2001
- *Call for comments concerning over-the-air television services in Vancouver – Order in Council P.C. 2000-1551*, Public Notice CRTC 2000-145, 20 October 2000
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999

This decision is to be appended to each 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 1 to Broadcasting Decision CRTC 2008-72

Terms and conditions of licence for CHNM-TV and CHNM-DT Vancouver and their transmitters in Victoria

Terms

The licences will expire 31 August 2009.

Conditions of licence for CHNM-TV Vancouver and its transmitter in Victoria

1. No more than 10% of all programming broadcast during each broadcast week shall be broadcast on both CHNM-TV and Citytv Vancouver.
2. All of the third-language ethnic programming broadcast on CHNM-TV during the broadcast year shall be distinct from the third-language ethnic programming broadcast on Citytv Vancouver.
3. The licensee shall devote to the broadcast of ethnic programs 100% of the total number of hours broadcast between 8:00 p.m. and 10:00 p.m. during the aggregate of the broadcast days in each of the 12 periods of four or five weeks in the calendar approved by the Commission and referred to in subsection 9(1) of the *Television Broadcasting Regulations, 1987*.
4. The licensee shall broadcast ethnic programs directed toward a minimum of 22 distinct ethnic groups monthly.
5. The licensee shall not devote more than 20 hours per week during the period 6:00 a.m. to midnight to the broadcasting of programs in South Asian languages.
6. The licensee shall not devote more than 20 hours per week during the period 6:00 a.m. to midnight to the broadcasting of programs in Chinese languages.
7. The licensee shall, within seven broadcast years, expend the following towards the fulfilment of its tangible benefit commitments:
 - Channel M Independent Producers Initiative – \$4 million;
 - Channel M News Bureau in Victoria – \$1 million; and
 - University of British Columbia Multicultural Film Production Program – \$1 million.

8. The licensee shall expend, by 31 August 2009, the following amounts to meet the undertaking's outstanding funding commitments:
 - \$1,584,253 to independent production initiatives;
 - \$644,500 to script and concept development; and
 - \$89,000 to scholarship initiatives.
9. The licensee shall caption 90% of all English-language programming during the broadcast day, including 100% of all English news programming, by 31 August 2008.
10. The licensee must adhere to the guidelines set out in the Canadian Association of Broadcasters' (CAB's) *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the Canadian Broadcast Standards Council (CBSC).
11. The licensee must adhere to the provisions of the CAB's *Broadcast code for advertising to children*, as amended from time to time and approved by the Commission.
12. The licensee must adhere to the guidelines on the depiction of violence in television programming set out in the CAB's *Voluntary code regarding violence in television programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the CBSC.

Definitions

For the purposes of these conditions,

“broadcast week” means seven consecutive broadcast days beginning on Sunday.

“expend” and “expenditure” mean actual cash outlay.

“script and concept development expenditures” mean those expenditures, excluding overhead costs, that are incurred prior to the commencement of pre-production and before the financing of the project is in place. Spending on programs that are assured of going to air at the time of the expenditure is not considered as script and development expenditures.

Conditions of licence for CHNM-DT Vancouver and its transmitter in Victoria

1. The licence will be subject to the terms and conditions applicable to the analog television station CHNM-TV Vancouver.

2. The licensee shall ensure that all programming broadcast on the undertaking is a simulcast of the programming broadcast on CHNM-TV Vancouver, with the exception of up to 14 hours per week of unduplicated, supplementary programming.
3. The licensee shall ensure that at least 50% of the unduplicated, supplementary programming broadcast by the undertaking is Canadian.
4. The licensee shall ensure that all unduplicated, supplementary programming broadcast by the undertaking is broadcast in a wide screen (16:9 aspect ratio), high definition format.
5. The licensee shall ensure that all programs that are simulcast by the undertaking and that are available to the licensee in a wide screen (16:9 aspect ratio) format are also broadcast in that format.
6. The licensee shall ensure that all programs that are simulcast by the undertaking during the evening broadcast period and that are available to the licensee in high definition are also broadcast in high definition.
7. The licensee shall ensure that the transmission of data does not affect the quality or quantity of high definition programming.

Appendix 2 to Broadcasting Decision CRTC 2008-72

Condition of approval

Rogers Broadcasting Limited shall file, within 30 days of the date of this decision, a plan for allocating the \$129,000 (rounded) in additional benefits that is acceptable to the Commission and that reflects the value of the transaction, as determined by the Commission in this decision.

Expectations

The Commission expects the licensee to maintain independent management of the news departments of CHNM-TV and Citytv Vancouver, as well as separate presentation structures, including journalists and producers, for the broadcast of news programming by these undertakings.

Further, given the licensee's commitment to apply its resources and expertise to further support and strengthen the service that CHNM-TV is already providing, the Commission expects the licensee to fulfil the following commitments, as set out *New multilingual ethnic television station to serve Vancouver*, Broadcasting Decision CRTC 2002-39, 14 February 2002:

- The Commission expects the licensee to broadcast a minimum of 10 hours of third-language independent production during each week. This programming will be produced by independent producers from British Columbia and will consist of a minimum of 5 hours of original programming.
- The Commission expects the licensee to broadcast a minimum of 55.5 hours of programming each week that has been produced in the Greater Vancouver Area.
- The Commission expects the licensee to ensure that its Advisory Board consists of representatives from a variety of ethnic groups.
- The Commission expects the licensee to caption, during each broadcast week, a minimum of three hours of programming in Chinese languages.
- In *Representation of cultural diversity on television – Creation of an industry/community task force*, Public Notice CRTC 2001-88, 2 August 2001, the Commission called upon the Canadian Association of Broadcasters to develop an action plan for a joint industry/community task force. The role of this task force is to sponsor research, identify "best practices," and help define the issues and present practical solutions to ensure that the Canadian broadcasting system reflects all Canadians. In its notice, the Commission emphasized the importance of having the participation of all sectors of the broadcasting industry, including specialty services. The Commission therefore expects the licensee:

- to adhere to its commitment to contribute to the work of the task force;
- to contribute to a broadcasting system that accurately reflects the presence in Canada of cultural and racial minorities and Aboriginal peoples;
- to ensure that the on-screen portrayal of all such groups is accurate, fair and free of stereotypes in all programming, both ethnic and non-ethnic; and
- to ensure that its hiring practices reflect the diversity of Vancouver's population.