



## Broadcasting Decision CRTC 2009-249

Route reference: 2009-36

Ottawa, 4 May 2009

**Rogers Broadcasting Limited**  
Kingston, Ontario

*Application 2008-1585-5, received 25 November 2008*

*Public Hearing in the National Capital Region*

*30 March 2009*

### **CIKR-FM and CKXC-FM Kingston – Acquisition of assets**

*The Commission **approves** the application by Rogers Broadcasting Limited for authority to acquire from K-Rock 1057 Inc. the assets of the English-language FM radio stations CIKR-FM and CKXC-FM Kingston.*

#### **Introduction**

1. The Commission received an application by Rogers Broadcasting Limited (Rogers) for authority to acquire from K-Rock 1057 Inc. (K-Rock) the assets of the English-language FM radio programming undertakings CIKR-FM and CKXC-FM Kingston. The applicant also requested new broadcasting licences to continue the operation of the undertakings under the same terms and conditions as those in effect under the current licences. The Commission received several interventions in support of this application.
2. The Commission has carefully examined the application and has identified the following issues to be addressed in its determinations:
  - the sale of CKXC-FM within its first licence term;
  - the assessment of the value of the transaction;
  - the assessment of the proposed tangible benefits; and
  - the contributions to Canadian content development.

#### **Sale of CKXC-FM within its first licence term**

3. The proposed transaction involves the acquisition of the assets of two stations, CIKR-FM and CKXC-FM. The broadcasting licence for CIKR-FM was issued in 2000.
4. The broadcasting licence for CKXC-FM was granted in Broadcasting Decision 2007-334. Consequently, the sale of this undertaking would occur within its first licence term.

5. When examining such transactions, the Commission is concerned with the following two issues:
  - the integrity of the licensing process; and
  - the potential gain to the vendor.

**Integrity of the licensing process**

6. In Broadcasting Decision 2007-334, the Commission approved an application by K-Rock for a broadcasting licence to operate a new FM radio programming undertaking (CKXC-FM) to serve Kingston based on the following factors:
  - At a public hearing commencing 18 June 2007, the Commission considered three applications to serve the radio market in Kingston, Ontario. The Commission was of the view that the Kingston radio market could support all three of the proposed FM radio services.
  - The Country music format proposed by K-Rock would compete directly for listeners with the U.S station WBDR-FM and therefore had the greatest potential to repatriate Kingston area listeners and advertising revenues. The repatriation of out-of-market tuning by K-Rock's proposed station would also reduce the impact that this station might otherwise have on the advertising revenues of other local Kingston stations.
  - K-Rock indicated that in addition to the required basic annual contributions, it would, by condition of licence, allocate an annual contribution of \$19,500 in each of the first seven years of operation.
7. With respect to the present application, Rogers indicated that K-Rock had invested significant time, effort and resources since beginning the operation of CKXC-FM. Further, it indicated that K-Rock had operated the station in accordance with its licence commitments. Rogers explained that the sale was motivated primarily by the unforeseen retirement of Mr. Wright due to health reasons. It further indicated that Mr. Wright is an experienced broadcaster who holds 60% of the voting interest in the undertakings and has been directly involved in the operation of both stations.
8. The Commission notes that CKXC-FM was launched shortly after it was licensed. Further, the Commission notes that Rogers is one of the original shareholders (with a 25% voting interest in the licensee) and has extensive broadcasting knowledge and the expertise required to navigate the changing competitive environment and difficult economic times.
9. Finally, the Commission notes that the sale of CKXC-FM is also part of an application involving another station that is not in its first licence term. Indeed, CIKR-FM is a well-established station operating in its second licence term, and the sale of CKXC-FM must be examined in this context.

10. 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**

11. 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. Rogers and K-Rock submitted that given the significant capital investment required to launch the service and the risk occurred 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 the service reach requirement, and that the rationale for the sale is related to the retirement plans of the majority shareholder, Mr. Wright.
12. In light of the above and based on financial evidence provided by the applicant, the Commission is satisfied that K-Rock does not stand to realize an unreasonable financial gain from the sale of the undertaking.
13. 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.

**Assessment of the value of the transaction**

14. Rogers stated that the purchase price amounted to \$8,530,494. The Commission considers this value reasonable.
15. Rogers will be assuming operating leases. Based on the information provided by the applicant, the Commission has determined the value of these commitments to amount to \$302,197. Considering the fact that Rogers already owns 25% of the stations, it will be assuming the remaining 75% of the commitments, for a value of \$226,648.
16. The Commission notes that in accordance with the agreement, one of the vendors, Mr. John Wright, will be receiving \$100,000 for consulting services. Commission practice is to include the value of such agreements in the value of the transaction.
17. Consequently, with the inclusion of the operating lease commitments and of the consulting fees, the revised value of the transaction for the purpose of calculating the benefits amounts to \$8,857,142.

**Assessment of the proposed tangible benefits**

18. Consistent with the Commission's tangible benefits policy outlined in Broadcasting Public Notice 2006-158, Rogers proposed a tangible benefits package equal to 6% of the proposed \$8,530,494 value of the transaction (\$511,830) or any other value determined by the Commission, to be allocated as follows over seven broadcast years:

- 3% to the Radio Starmaker Fund and Fonds Radiostar;
  - 2% to FACTOR; and
  - 1% to an eligible Canadian content development (CCD) initiative as outlined in paragraph 108 of Broadcasting Public Notice 2006-158.
19. The Commission notes that the licensee will contribute its remaining 1% as outlined above to North By Northeast (NXNE) to be used to secure a showcase performance for an artist or band from the Kingston area at the NXNE Music Festival in Toronto. This qualifies as an eligible CCD initiative.
20. Considering the revised value of the transaction, the value of the proposed tangible benefits package will increase from the proposed \$511,830 to \$531,429 (i.e. 6% of the revised amount of \$8,857,142). Given the revised tangible benefits package, the Commission directs Rogers to allocate the revised amount as follows:
- \$265,714 to the Radio Starmaker Fund and Fonds Radiostar;
  - \$177,143 to FACTOR; and
  - \$88,572 to the North By Northeast Music Festival.

### **Canadian content development**

21. All commercial radio licensees must adhere to the requirements relating to contributions to CCD set out in section 15 of the *Radio Regulations, 1986* (the Regulations), as amended from time to time.
22. The Commission notes that under the previous Canadian talent development (CTD) regime, all obligations with respect to CTD were imposed by condition of licence. Under the Commission's new CCD regime, in addition to the basic annual contributions required by section 15 of the Regulations, the Commission will also impose conditions of licence for over-and-above commitments.
23. As regards CIKR-FM, the Commission notes that further to Broadcasting Decision 2006-671, K-Rock was required to contribute a minimum of \$30,500 in each broadcast year to eligible initiatives. This includes a minimum contribution of \$3,000 under the Canadian Association of Broadcasters' former CTD plan (Public Notice 1995-196), to be allocated to FACTOR, in addition to \$27,500 to support live performances in Kingston by Canadian artists. A **condition of licence** to this effect is set out in the appendix to this decision. Consistent with the transitional measure for the implementation of the CCD regime set out in section 15 of the Regulations (see Broadcasting Public Notice 2008-67), the licensee will be permitted to reduce its basic contributions to CCD as regards CIKR-FM by the amount of \$30,500 in each broadcast year.
24. With respect to CKXC-FM, in addition to the basic annual requirements specified in section 15 of the Regulations and further to Broadcasting Decision 2007-334, K-Rock was to contribute a minimum of \$19,500 annually to CCD. Of this amount, K-Rock was

to contribute \$3,900 each year to FACTOR and the remaining \$15,600 to other eligible parties. A **condition of licence** to this effect is set out in the appendix to this decision.

## **Conclusion**

25. The Commission **approves** the application by Rogers Broadcasting Limited for authority to acquire from K-Rock 1057 Inc. the assets of the English-language FM radio programming undertakings CIKR-FM and CKXC-FM Kingston.
26. Upon surrender of the current licences issued to K-Rock 1057 Inc., the Commission will issue new licences to Rogers Broadcasting Limited. The licences will expire 31 August 2013, the expiry date of the current licences, and will be subject to the terms and **conditions** set out in the appendix to this decision.

## **Employment equity**

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

Secretary General

## **Related documents**

- *Amendments to the Radio Regulations, 1986 – Implementation of the Commercial Radio Policy 2006 and the Digital Radio Policy – Regulatory Policy*, Broadcasting Public Notice CRTC 2008-67, 23 July 2008
- *Conversions to FM band and licensing of a new radio station to serve Kingston*, Broadcasting Decision CRTC 2007-334, 28 August 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *CIKR-FM Kingston – Licence renewal*, Broadcasting Decision CRTC 2006-671, 13 December 2006
- *Contributions by radio stations to Canadian talent development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995

*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 to Broadcasting Decision CRTC 2009-249

### Terms and conditions of licence for CIKR-FM and CKXC-FM Kingston

#### Terms

The licences will expire 31 August 2013.

#### Conditions of licence for CIKR-FM Kingston

1. The licence will be subject to the conditions set out in *Conditions of licence for AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.
2. The licensee shall contribute a minimum of \$30,500 in each broadcast year to Canadian content development, to be allocated as follows:
  - \$27,500 to support live performances in Kingston by Canadian artists; and
  - \$3,000 to FACTOR.

#### Conditions of licence for CKXC-FM Kingston

1. The licence will be subject to the conditions set out in *Conditions of licence for AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.
2. By the end of the third year of operations, the licensee shall, as an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986*, in each broadcast week:
  - a) devote, in that broadcast week, a minimum of 37% of its musical selections from content category 2 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 37% of its musical selections from content category 2 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 *Radio Regulations, 1986*.

3. In addition to the basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time, the licensee shall contribute a minimum of \$19,500 annually to the promotion and development of Canadian content. This amount is over and above the licensee's required basic annual CCD contribution. Of this amount, \$3,900 per year shall be devoted to FACTOR. The remainder, \$15,600, shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.