



Broadcasting Decision CRTC 2009-536

Route reference: 2009-425

Additional reference: 2009-425-1

Ottawa, 28 August 2009

2209005 Ontario Inc.
Montréal, Quebec

*Applications 2009-1020-0 and 2009-1018-4, received 14 July 2009
Public Hearing in the National Capital Region
24 August 2009*

CJNT-TV Montréal – Acquisition of assets

*The Commission **approves**, subject to certain conditions, applications by 2209005 Ontario Inc. for authority to acquire from Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership the assets of the ethnic television station CJNT-TV Montréal and for a broadcasting licence to continue the operation of the undertaking. The conditions of approval are set out in the appendix to this decision.*

*The Commission **renews** the broadcasting licence for the above-mentioned station until 31 August 2016. The licence will be subject to the terms and **conditions** set out in the appendix to this decision.*

Given the specific context of the renewal the financial difficulties of the station, the Commission intends to re-evaluate the inclusion of French-language programming in time periods devoted to non-ethnic programming at a public hearing to be held in 2012.

Introduction

1. The Commission received applications from 2209005 Ontario Inc. (the applicant), for authority to acquire from Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership (Canwest) the assets of the ethnic television programming undertaking CJNT-TV Montréal (also known as E! Montréal). The applicant also requested a new broadcasting licence to continue the operation of the undertaking until 31 August 2016.
2. In addition, the applicant requested that it be relieved of its obligation to provide specific proportions of its non-ethnic programming in English and French.

3. The applicant is a corporation owned by 2185220 Ontario Limited (30% of the voting shares), a corporation equally owned by Christopher J. Fuoco and Kimberly S. Train, and by three other shareholders, namely Romen Podzyhun, Anthony D'Andrea and C.J. (Cal) Millar (respectively holding 23.4%, 23.3% and 23.3% of the voting shares).
4. The Commission also received applications from 2190015 Ontario Inc., a corporation that has the same ownership structure as the applicant, to acquire the English-language television programming undertaking CHCH-TV Hamilton and its transmitters and the transitional digital television programming undertaking CHCH-DT Hamilton (the CHCH undertakings). The CHCH undertakings are the subject of Broadcasting Decision 2009-537, also issued today. The CHCH undertakings and CJNT-TV are part of the same proposed transaction.
5. As part of this process, the Commission received and considered interventions with respect to the applications. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and determinations

6. After examining the applications in light of applicable regulations and policies and taking into account the interventions and the applicant's reply to the interventions, the Commission considers that the issues to be addressed in its determinations are the following:
 - proposed value of the transaction;
 - proposed tangible benefits package;
 - proposed amendments to the licence;
 - closed captioning;
 - described video;
 - audio description; and
 - digital transition.

Proposed value of the transaction

7. Because the Commission does not solicit competing applications for authority to transfer the ownership or control of programming undertakings, the onus is on the applicant to demonstrate that the proposed value of the transaction is acceptable and reasonable.

8. The purchase price for the whole transaction (including the CHCH undertakings) as set out in the purchase agreement, is \$12. The applicant estimated the value of the transaction based on the Commission's benefit guidelines to be equivalent to the commitments (as identified in its applications) to be assumed by the applicant. These commitments total not more than \$500,000.
9. After analyzing the financial information submitted, the Commission finds that the value of the transaction is negative.
10. In making its determination the Commission included the negative value of the working capital estimated as of the date of available financial statements (30 April 2009). The Commission also included the value of assumed leases. This value should have included the value of the co-siting agreement. However, this agreement will only be signed just before closing and its value is unknown at this time. Based on the value generally seen in similar agreements, the Commission is of the view that, even with the inclusion of this agreement, the value of the transaction would remain negative.

Proposed tangible benefits

11. As set out in Public Notice 1989-109 and reaffirmed in Public Notice 1993-68, in the absence of a competitive process, application of the benefits test remains the best method of ensuring that applications for transfer of control or ownership are the best possible proposals under the circumstances, and are beneficial to the public served by the undertakings and to the Canadian broadcasting system as a whole.
12. As indicated in Public Notice 1999-97, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits representing 10% of the value of a transaction, as accepted by the Commission. Such benefits should be directed to the communities served and to the broadcasting system as a whole.
13. In the present case, the applicant has not proposed a tangible benefits package on the basis that the stations are facing financial difficulties and were slated to be closed by the current owner—Canwest—as a result of the stations' unprofitability. Instead, the applicant has offered a number of intangible benefits that would result from the transaction. These include continuing the employment of a substantial number of skilled professionals in broadcasting (i.e. no layoffs are planned), increasing diversity, refocusing the stations so they become self-supporting and converting the stations to operate on fully digital, high-definition platforms so that they are better positioned to compete in the future.

Commission's determination

14. The Commission notes that the value of the transaction is negative and therefore no tangible benefits are payable in the circumstances.

Proposed amendments to the licence

Provision of non-ethnic programming

15. As set out in CJNT-TV's licensing decision, Decision 2000-744, CJNT-TV is subject to the following condition of licence related to the provision of non-ethnic programming:
 4. In periods where the licensee chooses to broadcast non-ethnic programming:
 - a) no less than 35% and no more than 60% of the total number of hours dedicated annually to non-ethnic programming shall be devoted to English-language non-ethnic programming;
 - b) no less than 35% and no more than 60% of the total number of hours dedicated annually to non-ethnic programming shall be devoted to French-language non-ethnic programming.
16. The applicant proposed to delete the above-noted condition of licence. It argued that dividing CJNT-TV's non-ethnic programming between English and French as provided by the condition of licence would result in an inadequate supply of high-quality non-ethnic programming in either language and, as a result, CJNT-TV would not be able to generate sufficient revenues from such programming to cross-subsidize its ethnic programming.
17. The Commission notes that CJNT-TV is the only ethnic conventional television station with English- and French-language requirements and that it operates and competes in a market that is dominated by a large number of conventional English- and French-language television stations. It is the Commission's view that the applicant has demonstrated that, in the current circumstances, removal of the condition of licence would provide financial relief to the station and it will provide an appropriate level of service to ethnic communities in Montréal. Accordingly, the Commission removes the above condition of licence. The Commission, however, expects the applicant to continue to include French language programming in the time periods that it devotes to non-ethnic programming. It plans to review the applicant's approach to the matter at a public hearing in 2012.

Local ethnic programming

18. Decision 2000-744 sets out the licensee's commitment to broadcast 13 hours and 30 minutes of original local ethnic programming each week.
19. The applicant proposed to increase the amount of local ethnic programming that it will broadcast weekly from 13 hours 30 minutes to 14 hours. It noted that this commitment would be in accordance with Broadcasting Regulatory Policy 2009-406, which established minimum local programming levels based on market size.

20. The Commission clarifies that the harmonized programming levels that the applicant cites from Broadcasting Regulatory Policy 2009-406 were intended for stations that are owned and operated by the largest multi-station ownership groups. However, the Commission recognizes and commends the applicant for increasing its commitment to local ethnic programming.

Canadian films

21. Decision 2000-744 set out the licensee's commitment to devote at least 25% of its film schedule to Canadian films.
22. The applicant noted that its proposed new programming strategy for CJNT-TV would incorporate a broader use of foreign films. It argued that adherence to the requirement that it devote 25% of the station's film schedule to Canadian films would be virtually impossible to meet due to the lack of availability of Canadian-produced foreign language films.
23. The Commission considers that relief from its commitment relating to the exhibition of Canadian films would not negatively impact on the overall broadcast of Canadian programs. Accordingly, the Commission determines that the above-noted condition of licence should not apply.

Closed captioning

24. In Broadcasting Public Notice 2007-54, the Commission indicated that it would require all English- and French-language broadcasters to caption 100% of their programs, with the exception of advertising and promos. While the Commission announced that it is not prepared to impose specific obligations with respect to the captioning of third-language programming at this time, it encourages broadcasters to work toward solutions for making third-language programming more accessible, and to caption third-language programming whenever possible. Accordingly, the Commission requires the applicant to caption 100% of its English- and French-language programs, beginning in the first year of the licence term. A **condition of licence** to this effect is set out in the appendix to this decision. Further, when captions are available, the Commission expects the applicant to provide viewers with a closed captioned version of all programming aired during the overnight period.
25. Further, in Broadcasting and Telecom Regulatory Policy 2009-430 (the Accessibility Policy), the Commission stated that it intends to require television licensees to abide by certain conditions of licence relating to closed captioning at the time of their next licence renewal. However, the Commission recognizes that, given the current financial status of the station, the applicant may not be in a position to fulfill these conditions immediately. Accordingly, the Commission requires the applicant, beginning in year 4 of its licence term:
- to ensure that all advertising, sponsorship messages and promos are closed-captioned;

- to adhere to the quality standards on closed captioning developed by the television industry's working groups, once approved by the Commission and as amended from time to time; and
- to put in place a monitoring system to ensure that closed captioning is included in the broadcast signal and that captioning reaches the viewer in its original form.

A **condition of licence** to this effect is set out in the appendix to this decision.

Described video

26. Television broadcasters provide access to television programming for those with visual impairments through two means: described video¹ and audio description.²
27. In the Accessibility Policy, the Commission indicated that it would continue to require conventional broadcasters to provide four hours of described video per week by the end of their licence term. The Commission notes that while the discussions regarding this matter did not encompass the particular situation of ethnic broadcasters, the Commission is seeking to apply this new requirement consistently across all conventional and analog Category 1 pay and specialty services.³
28. However, the Commission recognizes that, given the current financial status of the station, the applicant may not be in a position to fulfill a condition of licence related to the provision of described video immediately. Accordingly, the Commission requires the applicant, beginning in year 4 of its licence term, to provide an average of 4 hours per week of described programming, of which 50% must be original to the service. To fulfill this requirement, the described programming may be drawn from the following categories: 2(b) Long-form documentary; 7(a) Ongoing dramatic series; 7(b) Ongoing comedy series (sitcoms); 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 7(e) Animated television programs and films; 7(g) Other drama; 9 Variety; and 11 General entertainment and human interest, as well as programming targeted to children. A **condition of licence** to this effect is set out in the appendix to this decision.

Audio description

29. In the Accessibility Policy, the Commission stated that it intends to require television licensees to implement audio description by condition of licence at the time of their next licence renewal. However, the Commission recognizes that, given the current financial status of the station, the applicant may not be in a position to fulfill a condition of licence related to the provision of audio description immediately. Accordingly, the Commission

1 Described video is a technique whereby a narrator provides a description of a program's key visual elements so that persons who are blind or have visual impairments can understand what is occurring on the screen.

2 Audio description occurs when announcers read aloud the textual and graphic information that is displayed on the screen during information programs.

3 The Commission notes that certain conventional broadcasters had conditions of licence in their last licence term specifying the amount of described video they were required to provide.

requires the applicant to provide audio description for all information programs, and for news programming in particular, beginning in year 4 of its licence term. A **condition of licence** to this effect is set out in the appendix to this decision.

Digital transition

30. The Commission notes that over the new licence term, CJNT-TV will have to cease transmission of analog television signals, unless it qualifies for an exemption. Specifically, in Broadcasting Public Notice 2007-53, the Commission determined that most television licensees will be authorized to broadcast only digital over-the-air signals after 31 August 2011. Accordingly, the Commission is imposing a **condition of licence** to this effect.
31. The conditions of licence, commitment, expectations and encouragement set out in the appendix to this decision will remain in effect following the conversion from analog to digital. In the event that the conversion results in amendments to the conditions of licence, these amendments will be carried out accordingly. The Commission reminds the applicant that it must comply with the technical requirements of the Department of Industry over the entire licence term.

Other matters

32. The Commission received an intervention by Canadian Hellenic Cable Radio Ltd. (CHCR). CHCR expressed concerns regarding the applicant's new programming strategy, which would rely heavily on music videos and short films targeted to a younger demographic. CHCR also expressed concern that the applicant did not have any experience in the production of original third-language programming.
33. In reply, the applicant stated that CJNT-TV's new programming strategy was developed because traditional ethnic programming initiatives, which targeted an older demographic, were never successful. With respect to comments that the applicant lacks experience in the production of ethnic programming, it pointed out that Rogers Broadcasting Limited, owner of the OMNI stations, also never had any experience prior to purchasing the stations yet was successful in providing a valuable service to Toronto's ethnic communities.
34. Though the station will focus on a younger demographic by offering a programming schedule comprised of international music videos and foreign films, the Commission notes that the applicant will continue to provide a significant amount of locally produced third-language programming. The Commission is satisfied that, despite the proposed changes to the station's programming strategy, CJNT-TV will continue to meet the needs of the various ethnic communities in Montréal.

Conclusion

35. The Commission **approves**, subject to certain conditions, the applications by 2209005 Ontario Inc. for authority to acquire from Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership the assets of the ethnic television programming undertaking CJNT-TV Montréal and for a broadcasting licence to continue the operation of the undertaking. The conditions of approval are set out in the appendix to this decision.
36. In light of the above, the Commission **approves** the proposal by the applicant to amend the broadcasting licence for CJNT-TV Montréal in order to delete condition of licence 4. It further **approves** the applicant's proposal to eliminate its commitment to devote at least 25% of its film schedule to Canadian films.
37. Upon surrender of the current licence issued to Canwest Television GP Inc. (the general partner) and Canwest Media Inc. (the limited partner), carrying on business as Canwest Television Limited Partnership, the Commission will issue a new licence to 2209005 Ontario Inc.
38. The applicant requested a seven-year licence term for CJNT-TV from 1 September 2009 to 31 August 2016. It submitted that the licence term would be conditional on the applicant presenting itself at a public hearing in the spring of 2012 to discuss any issues that the Commission deems appropriate.
39. The Commission notes that a number of interveners have recommended that the applicant be granted a shorter licence term, or at a minimum, be called to a public hearing in 2012 as proposed by the applicant. They argued that adopting either one of these proposals would allow the Commission to address any licensing or other regulatory issues in a timely fashion.
40. The Commission acknowledges the programming concerns raised by interveners. It also notes the applicant's proposal that it be called to a public hearing in 2012 to review issues related to CJNT-TV's programming.
41. The Commission determines that a seven-year licence term is appropriate in this instance. As set out in the appendix to this decision, this seven-year licence term is conditional on the applicant presenting itself at a public hearing to be held in 2012 when the Commission intends to re-evaluate the inclusion of French-language programming in time periods devoted to non-ethnic programming. Accordingly, the licence will expire 31 August 2016 and will be subject to the terms and **conditions** set out in the appendix to this decision.

Employment equity

42. Because this licensee 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

- *CHCH-TV Hamilton and its transmitters and CHCH-DT Hamilton – Acquisition of assets*, Broadcasting Decision CRTC 2009-537, 28 August 2009
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- Notice of hearing, Broadcasting Notice of Consultation CRTC 2009-425, 17 July 2009
- *Policy determinations resulting from the 27 April 2009 public hearing*, Broadcasting Regulatory Policy CRTC 2009-406, 6 July 2009
- *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007
- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007
- *Acquisition of the assets of CJNT-TV*, Decision CRTC 2000-744, 29 November 2000
- *Building on success - A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999
- *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, Public Notice CRTC 1993-68, 26 May 1993

- *Elements assessed by the Commission in considering applications for the transfer of ownership or control of broadcasting undertakings, Public Notice CRTC 1989-109, 28 September 1989*

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 2009-536

Conditions of approval, terms, conditions of licence, commitment, expectations and encouragement for CJNT-TV Montréal

Conditions of approval

1. The applicant shall file, before closing of the transaction, an attestation letter from the financial institution where the funds are held, confirming that the money has effectively been deposited in trust and stating to whom the funds can be released.
2. The applicant shall file, before closing of the transaction, a letter from the CIBC, BCH.CA Inc. or any other lender confirming approval of the loan facility.

Terms

The licence will be in effect from 1 September 2009 to 31 August 2016.

This expiry date is conditional on the licensee presenting itself at a hearing to be held in 2012 to discuss the inclusion of French-language programming in time periods devoted to non-ethnic programming.

Conditions of licence

1. CJNT-TV shall devote to the broadcasting of ethnic programs:
 - a) not less than 50% of the total number of hours broadcast monthly between 6 p.m. and midnight; and
 - b) not less than 75% of the total number of hours broadcast annually between 8 p.m. and 10 p.m.
2. CJNT-TV shall devote to the broadcasting of Canadian programs:
 - a) not less than 50% of the total number of hours broadcast annually between 6 a.m. and midnight; and
 - b) not less than 40% of the total number of hours broadcast annually between 6 p.m. and midnight.
3. CJNT-TV shall devote to the broadcasting of non-ethnic programs:
 - a) not more than 40% of the total number of hours broadcast annually between 6 a.m. and midnight; and

- b) not more than 50% of the total number of hours broadcast annually between 6 p.m. and midnight.
4. CJNT-TV shall broadcast ethnic programs directed toward not less than 18 distinct ethnic groups monthly.
5. CJNT-TV shall broadcast ethnic programs in not less than 15 different languages monthly.
6. The licensee shall adhere to CJNT-TV's *Code of programming standards and practices*, as filed with the approved application, and as amended from time to time and accepted by the Commission.
7. The licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
8. The licensee shall adhere to the guidelines on the depiction of violence in television programming set out in the *CAB Violence Code*, as amended from time to time and approved by the Commission.
9. The licensee shall adhere to the provisions of the Canadian Association of Broadcasters' *Broadcast code for advertising to children*, as amended from time to time and approved by the Commission.
10. The licensee shall caption 100% of the English- and French-language programs over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
11. The licensee shall, beginning in year 4 of its licence term:
 - ensure that all advertising, sponsorship messages and promos are closed captioned;
 - adhere to the quality standards on closed captioning developed by the television industry's working groups, once approved by the Commission as amended from time to time; and
 - put in place a monitoring system to ensure that closed captioning is included in the broadcast signal and that captioning reaches the viewer in its original form.

12. The licensee shall broadcast, beginning in year 4 of its licence term, an average of 4 hours per week of described programming, of which 50% must be original to the service.

To fulfill this condition, the described programming may be drawn from the following categories: 2(b) Long-form documentary; 7(a) Ongoing dramatic series; 7(b) Ongoing comedy series (sitcoms); 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 7(e) Animated television programs and films; 7(g) Other drama; 9 Variety; and 11 General entertainment and human interest, as well as programming targeted to children.

13. The licensee shall provide audio description for all information programs, and for news programming, beginning in year 4 of its licence term.
14. Unless otherwise authorized by the Commission, the licensee shall not transmit analog television signals after 31 August 2011.

Commitment

The licensee will broadcast 14 hours of original local ethnic programming each week.

Expectations

The Commission expects the licensee to increase the level of local ethnic programming broadcast on CJNT-TV as the station's financial position improves over the licence term.

When captions are available, the Commission expects the licensee to provide viewers with a closed captioned version of all programming aired during the overnight period.

The Commission expects the applicant to continue to include French-language programming in the time periods that it devotes to non-ethnic programming.

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.

Encouragement

The Commission encourages the licensee to continue its ongoing commitment to work on solutions for making third-language programming more accessible and to caption third-language programming whenever possible.