



Broadcasting Decision CRTC 2013-345

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Route reference: 2013-154

Ottawa, 19 July 2013

The Banff Centre
Banff, Alberta

Application 2012-1460-1, received 16 November 2012
Public hearing in the National Capital Region
27 May 2013

CFPE-FM and CFPF-FM Banff - Acquisition of assets

*The Commission **approves** an application by The Banff Centre to acquire the assets of the English-language low-power tourist information station CFPE-FM and the French-language low-power tourist information station CFPF-FM, and for new broadcasting licences to continue the operation of the stations under the same terms and conditions as those in effect under the current licences.*

The application

1. The Commission received an application by The Banff Centre for authority to acquire from Friends of Banff National Park Fellowship the assets of the English-language low-power tourist information station CFPE-FM and of the French-language low-power tourist information station CFPF-FM, and for new broadcasting licences to continue the operation of the stations under the same terms and conditions as those in effect under the current licences.
2. The Banff Centre is an institution specialized in arts and culture, continued under Part 3 of the Province of Alberta's *Post-secondary Learning Act* (Learning Act). Its affairs are managed and operated by the Board of Governors of The Banff Centre (the Board).
3. Friends of Banff National Park Fellowship is a not-for-profit corporation controlled by its board of directors.
4. As a result of the transaction, The Banff Centre would become the licensee of CFPE-FM and CFPF-FM.
5. The Commission received interventions in support of this application. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decisions

6. Following an examination of the public record for this application in light of applicable regulations and policies, the Commission determines that the issues it must address are the following:
 - whether The Banff Centre is eligible to hold a broadcasting licence pursuant to the *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)* (The Direction);
 - the proposed tangible benefits package; and
 - the licensee's non-compliance regarding the filing of its annual returns and financial statements.

Whether The Banff Centre is eligible to hold a broadcasting licence pursuant to the *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*

7. In accordance with the Direction issued by the Governor in Council pursuant to section 26 of the *Broadcasting Act*, no broadcasting licence may be issued to an applicant that is an agent of Her Majesty in right of a Province unless certain conditions are met.
8. The Banff Centre argued that it was not an agent of Her Majesty in right of Alberta, submitting that its enabling statute did not establish it as an agent of the Crown and that the relationship existing between it and the Crown is such that it does not qualify as an agent of the Crown at common law.
9. In support of its position, The Banff Centre submitted that the Learning Act provided that the management and operations of the institution is to be undertaken by the Board and vested the Board a wide range of authority in order to accomplish its mandate. The Banff Centre further noted that only a minority of the members named to its Board are appointed by the Lieutenant-Governor in Council of Alberta.
10. The Commission has carefully reviewed the legislative framework governing The Banff Centre. In conducting this review, the Commission has assessed the powers and discretionary authority vested in the Board and the relationship between it and the Crown in right of Alberta. The Commission notes that the Learning Act provides the Board with broad powers and discretion with respect to the exercise of those powers. In this regard, the Learning Act vests in the Board the powers of a natural person and provides it with the mandate to manage and operate The Banff Centre in accordance with this institution's mandate. In furtherance of this mandate, the Learning Act provides the Board with the authority to, among other matters:
 - hire The Banff Centre's senior and other staff and establish their respective duties;
 - approve programs for and fees paid by students;
 - develop, manage and operate programs, services and facilities;

- provide funding for various projects;
 - acquire interests in land; and
 - borrow funds.
11. The Learning Act clearly provides that the Board is free to manage The Banff Centre so long as it operates this institution in accordance with its mandate. The Commission further notes that the Province Alberta provides less than a third of The Banff Centre's budget.
12. While the Commission acknowledges that the Minister of Advanced Education and Technology of Alberta and the Lieutenant-Governor in Council of Alberta are provided with certain levers of oversight over the Board, it determines that these levers do not displace the conclusion that it is the Board that is entrusted with the obligation to manage the day-to-day affairs of The Banff Centre. In light of the above, the Commission is of the view that The Banff Centre is not an agent of Her Majesty in right of Alberta and is, therefore, not precluded by the Direction from holding a broadcasting licence.

Assessment of the proposed tangible benefits package

13. The Banff Centre has proposed a tangible benefits package representing 6% of the purchase price. However, the Commission notes that the tangible benefits policy, as set out in the *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006, refers to commercial radio stations. The *Radio Regulations, 1986* (the Regulations), defines a commercial radio station as an A.M. station, a F.M. station or a digital radio station, other than one that is owned and operated by the Canadian Broadcasting Corporation or a not-for-profit corporation. The Commission notes that The Banff Centre is a registered charity whose object and duties are consistent with those of a not-for-profit corporation. As such, the Commission finds that no tangible benefits package is required.

Non-compliance

14. The Commission notes that the licensee of CFPE-FM and CFPF-FM has failed to comply with section 9(2) of the Regulations relating to the filing of annual returns and of financial statements in that the annual returns and/or financial statements for CFPE-FM and CFPF-FM for the 2008-2009, 2009-2010, 2010-2011 and 2011-2012 broadcast years were filed late.
15. The Banff Centre stated that it would set out the Commission's information reporting requirements in a policy manual for the stations' operation and add the requirements with respect to section 9(2) of the Regulations to the duties of the stations' manager. Moreover, The Banff Centre's finance department will assume additional responsibility for collecting and maintaining financial and other required information for the stations. Finally, on-time complete filing of the Commission's information requests will be added to the criteria used to evaluate the performance of the stations' manager and of the manager of the department of finance.

16. The Commission notes the measures proposed by The Banff Centre to remain in compliance with its regulatory obligations. The Commission will review CFPE-FM and CFPF-FM's non-compliance with their regulatory obligations at the time of their respective licence renewals.

Conclusion

17. In light of all of the above, the Commission **approves** the application by The Banff Centre for authority to acquire from Friends of Banff National Park Fellowship the assets of the English-language low-power tourist information radio programming undertaking CFPE-FM and of the French-language low-power tourist information radio programming undertaking CFPF-FM, and for new broadcasting licences to continue the operation of the undertakings.

18. Upon surrender of the current licences issued to Friends of Banff National Park Fellowship, the Commission will issue new broadcasting licences to The Banff Centre, which will expire 31 August 2015. The terms and **conditions of licence** for these stations are set out in the appendices to this decision.

Secretary General

** This decision is to be appended to each licence.*

Appendix 1 to Broadcasting Decision CRTC 2013-345

Term, conditions of licence and encouragement for the English-language low-power tourist information radio programming undertaking CFPE-FM Banff, Alberta

Term

The licence will expire on 31 August 2015.

Conditions of licence

1. The licensee shall broadcast programming consisting exclusively of general information relating to the ecology, topography, history and culture of mountain regions and the promotion and preservation of the national park system, including weather reports provided by Banff National Park.
2. The licensee shall devote a maximum of 16% of its programming in each broadcast week to musical selections, of which 75% or more must be musical selections drawn from content category 3 (Special Interest Music).
3. The licensee shall devote 40% or more of its musical selections to Canadian selections in a broadcast week.
4. The licensee shall broadcast no more than six minutes of advertising in any hour and broadcast an average of no more than four minutes of advertising for every hour of broadcast, up to a total of 504 minutes of advertising per week.

Encouragement

In accordance with *Implementation of an employment equity policy*, public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Appendix 2 to Broadcasting Decision CRTC 2013-345

Term, conditions of licence and encouragement for the French-language low-power tourist information radio programming undertaking CFPF-FM Banff, Alberta

Term

The licence will expire on 31 August 2015.

Conditions of licence

1. The licensee shall broadcast programming consisting exclusively of general information and weather reports provided by Banff National Park.
2. The licensee shall broadcast no more than six minutes of advertising in any hour and broadcast an average of no more than four minutes of advertising for every hour of broadcast, up to a total of 504 minutes of advertising per week.

Encouragement

In accordance with *Implementation of an employment equity policy*, public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.