



Broadcasting Decision CRTC 2014-395

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Route reference: 2014-189

Ottawa, 30 July 2014

Rogers Broadcasting Limited, on behalf of a corporation to be incorporated Across Canada

Application 2014-0163-7, received 24 February 2014

Public hearing in the National Capital Region

26 June 2014

FXX – Acquisition of assets (corporate reorganization)

1. The Commission **approves** an application by Rogers Broadcasting Limited, on behalf of a corporation to be incorporated (Rogers (OBCI)) for authority to acquire from Rogers Broadcasting Limited (Rogers), as part of a corporate reorganization, the assets of the national, English-language Category 2 specialty service FXX (formerly known as Ampersand), and for a new broadcasting licence to operate the undertaking under the same terms and conditions as those set out in Broadcasting Decision 2011-105, with the exception that the standard conditions of licence set out in Public Notice 2000-171-1 will be replaced by the standard conditions of licence for Category B services set out in Broadcasting Regulatory Policy 2010-786-1. The Commission did not receive any interventions regarding this application.
2. The Commission notes that Rogers renamed the service FXX and launched it on 1 April 2014.
3. Rogers is wholly owned and controlled by Rogers Communications Inc. (RCI)
4. Pursuant to the *Direction to the CRTC (Ineligibility of Non-Canadians)* (the Direction) issued by the Governor in Council under subsection 26(1) of the *Broadcasting Act*, no broadcasting licence may be issued, and no amendment or renewals thereof may be granted, to an applicant that is a “non-Canadian.” A “non-Canadian” is a person or entity that is not a “Canadian.” A “Canadian” includes a “qualified corporation.”
5. The Direction defines a “qualified corporation” as follows:

“qualified corporation” means a corporation incorporated or continued under the laws of Canada or a province, where

(c) in the case of a corporation that is a subsidiary corporation,

(i) the parent corporation is incorporated or continued under the laws of Canada or a province,

(ii) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 66 2/3 percent of all of the issued and outstanding voting shares of the parent corporation and not less than 66 2/3 percent of the votes, and

(iii) the parent corporation or its directors do not exercise control or influence over any programming decisions of the subsidiary corporation where:

(A) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, less than 80 percent of the issued and outstanding voting shares of the parent corporation and less than 80 percent of the votes,

(B) the chief executive officer of the parent corporation or, where the parent corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer is a non-Canadian, or

(C) less than 80 percent of the directors of the parent corporation are Canadian.

6. Upon closing of the transaction, the new licensee, Rogers (OBCI), will be a corporation whose voting shares will be held by a corporation to be incorporated (Holdco) (80%) and by FX Networks, LLC (FX) (20%), a non-Canadian corporation. The voting shares in Holdco will be held by Rogers (83.33%) and FX (16.67%).
7. The Commission notes that in Broadcasting Decision 2013-642, it required the implementation of an Independent Programming Committee (IPC) to oversee the programming decisions for all licensed undertakings controlled by RCI and all of its subsidiaries, in order to comply with the Direction.
8. In its application, the applicant confirmed that it will be subject to Rogers' by-laws, a wholly owned subsidiary of RCI, in order to comply with the Direction at all times. The Commission considers that the established IPC ensures that FX or its directors do not exercise control or influence over programming decisions of Rogers (OBCI).
9. Therefore, the Commission concludes that despite the level of direct and indirect foreign ownership (i.e., 33.33%), the applicant's proposal satisfies paragraph (c) as neither its parent corporations nor its directors will have control or influence over programming decisions of Rogers (OBCI).
10. Upon surrender of the current licence issued to Rogers Broadcasting Limited, the Commission will issue a new broadcasting licence to Rogers Broadcasting Limited, on behalf of a corporation to be incorporated under the same terms and conditions as those in effect under the current licence, once the applicant has satisfied the Commission with supporting documentation that an eligible Canadian corporation has been incorporated in accordance with the application in all material respects.

Employment equity

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

Secretary General

Related documents

- *Terrestrial broadcasting distribution undertakings serving various locations in Ontario, New Brunswick, and Newfoundland and Labrador; national video-on-demand programming undertaking known as Rogers On Demand; and terrestrial and direct-to-home national pay-per-view services known as Rogers Sportsnet – Acquisition of assets (corporate reorganization)*, Broadcasting Decision CRTC 2013-642, 29 November 2013
- *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011
- *Ampersand – Category 2 specialty service*, Broadcasting Decision CRTC 2011-105, 18 February 2011
- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001

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

Appendix to Broadcasting Decision CRTC 2014-395

Terms, conditions of licence, expectations and encouragements for the specialty Category B service FXX

Terms

A licence will be issued once the applicant has satisfied the Commission with supporting documentation that an eligible Canadian corporation has been incorporated in accordance with the application in all material respects.

The licence will expire 31 August 2017.

Conditions of licence

1. The licensee shall adhere to the conditions set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011.
2. In regard to the nature of service:
 - (a) The licensee shall provide a national, English-language specialty Category B service devoted to romance, love and relationships and will include series based on relationships, feature films, mini-series, made-for-television movies and occasional magazine-style shows focusing on this genre and its stars.
 - (b) The programming shall be drawn exclusively from the following program categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
 - 2 (a) Analysis and interpretation
 - (b) Long-form documentary
 - 3 Reporting and actualities
 - 7 (a) Ongoing dramatic series
 - (b) Ongoing comedy series (sitcoms)
 - (c) Specials, mini-series or made-for-TV feature films
 - (d) Theatrical feature films aired on TV
 - (g) Other drama
 - 11 (a) General entertainment and human interest
 - (b) Reality television
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos

For the purposes of the conditions of this licence, “broadcast day” means the period of up to 18 consecutive hours, beginning each day not earlier than six o’clock in the morning and

ending no later than one o'clock in the morning of the following day, as selected by the licensee, or any other period approved by the Commission.

Expectations

The standard expectations applicable to this licensee are set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, as amended from time to time.

Encouragements

The standard encouragements applicable to this licensee are set out in Appendix 1 to *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011, as amended from time to time.