



## Broadcasting Decision CRTC 2019-204

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Reference: 2018-434

Ottawa, 12 June 2019

**0971197 B.C. Ltd.**  
Vancouver, British Columbia

*Public record for these applications: 2018-0527-7 and 2018-0784-3*

### **CIRH-FM Vancouver – Change in ownership and effective control and licence amendments**

*The Commission **approves** an application by 0971197 B.C. Ltd. (Roundhouse) for authorization to change its ownership and effective control through the transfer of all its issued and outstanding shares to South Fraser Broadcasting Inc.*

*Roundhouse is the licensee of the English-language specialty commercial radio station CIRH-FM Vancouver, British Columbia.*

*The Commission **denies** the request to amend conditions of licence relating to the broadcast of Canadian musical selections.*

*The Commission **approves in part** the request for a deferral of payments for Canadian content development (CCD) contributions. The Commission **directs** the applicant to expend the shortfall of \$580,345 by **10 September 2019**. The applicant will be granted some flexibility with respect to future CCD payments.*

#### **Application**

1. 0971197 B.C. Ltd. (Roundhouse) filed an application for authorization to change its ownership and effective control through the transfer of all its issued and outstanding shares to South Fraser Broadcasting Inc. (South Fraser). The applicant also filed an application to amend certain conditions of licence for the English-language specialty commercial radio station CIRH-FM Vancouver, British Columbia. The Commission did not receive any interventions in regard to these applications.
2. Roundhouse is a corporation owned by a group of shareholders and controlled by its board of directors.
3. South Fraser is a corporation that is wholly owned and controlled by Sukhvinder Singh Badh. It operates the English-language commercial radio station CISF-FM Surrey.

4. As a result of the proposed transaction, the effective control of Roundhouse would be exercised by Sukhvinder Singh Badh. Mr. Badh is a Canadian pursuant to *Direction to the CRTC (Ineligibility of Non-Canadians)*.
5. Pursuant to the purchase agreement, South Fraser would purchase the shares of the licensee for \$600,000. The applicant proposed a value of the transaction of \$958,000 and requested to be exempted from the obligation to pay a tangible benefits package.
6. The applicant also requested the following amendments to the conditions of licence:
  - to delete the condition of licence requiring the licensee to devote a minimum of 50% of its musical selections from content category 3 (Special Interest Music) to Canadian selections;
  - to reduce the requirement to devote a minimum of 50% of its musical selections from content category 2 (Popular Music) to Canadian selections to a minimum of 40%; and
  - to defer payments for Canadian content development (CCD) contributions (begin payments in year 2 of the new ownership).
7. The applicant indicated that the ownership transaction is conditional upon approval of the licence amendments.

## **Background**

8. In January 2014, the Commission held a public hearing in Surrey to consider multiple competing applications for radio stations. In Broadcasting Decision 2014-412, the Commission approved the application by Roundhouse for a new specialty radio station to serve Vancouver. CIRH-FM Vancouver launched in October 2015. However, due to severe financial challenges, the station ceased operations in May 2018.

## **Regulatory framework**

9. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act* (the Act). Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, that the benefits of the transaction are commensurate with the size and nature of the transaction and that the application represents the best possible proposal under the circumstances.
10. The Commission must consider each application on its merits, based on the circumstances specific to the application. In addition, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest as expressed in the objectives set out in section 3(1) of the Act.

## Issues

11. After examining the record for these applications in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:

- Impact of the transaction on the broadcasting system
  - Licence Trafficking Policy
  - Proposed licence amendments and integrity of the licensing process
  - Public interest
- Value of the transaction and allocation of tangible benefits
- Compliance

### **Impact of the transaction on the broadcasting system**

#### **Licence Trafficking Policy**

##### **Commission's analysis and decision**

12. In Broadcasting Public Notice 2008-4 (the Diversity of Voices Policy), the Commission stated that the sale of a newly licensed broadcasting undertaking brings into question the original licensing process. To ensure the integrity of the licensing process, it reaffirmed the need for the Licence Trafficking Policy. In Broadcasting Information Bulletin 2010-220, the Commission specified that, for licences issued following a competitive process, any transaction involving the licence will normally be denied during the first two years following the launch of the service, except where the applicant can demonstrate the necessity of the transaction as a result of a *force majeure* event. In the case of CIRH-FM, the station was on air for approximately two and a half years, which meets the minimum threshold of two years for the sale of an undertaking.

13. Accordingly, the Commission considers that the proposed transaction complies with the Licence Trafficking Policy.

#### **Proposed amendments to the conditions of licence relating to Canadian musical selections requirements**

##### **Applicant's request**

14. The applicant requested the following amendments to the conditions of licence:

- to delete the condition of licence requiring the licensee to devote a minimum of 50% of its musical selections from content category 3 (Special Interest Music) to Canadian selections; and

- to reduce the requirement to devote a minimum of 50% of its musical selections from content category 2 (Popular Music) to Canadian selections to a minimum of 40%.
15. According to the applicant, the current requirements would hinder the new sound and cohesive flow envisioned for the revamped radio station. The applicant explained that the difference between content category 2 and content category 3 musical selections would make it difficult to attract an audience that is interested in both.
16. In regard to the requirements for content category 2 musical selections, the applicant argued that, if the station were to no longer broadcast content category 3 music, the overall Canadian music selection would be reduced, thus increasing the likelihood of having to repeat certain content category 2 Canadian musical selections to meet the 50% threshold of Canadian content. The applicant also argued that repetition in music is often cited as a reason why listeners spend less time with radio services. It stated that its vision is to create a station that listeners are attracted to for longer periods. As a result, it would like to expand its musical selection within a single category. In the applicant's view, this can be attained by reducing the requirement for Canadian content category 2 musical selections from 50% to 40%, which would give the station additional flexibility to pull from a broader inventory of music within the category.

#### **Commission's analysis and decision**

17. The Commission generally considers applications proposing to modify or remove programming conditions of licence on a case-by-case basis with consideration given to the context of the proposals and the efforts undertaken by the licensee to implement these commitments. The Commission also typically expects licensees to demonstrate that a valid attempt has been made to implement the programming requirements over a minimum of a station's first licence term.
18. In Broadcasting Decision 2014-412, the Commission stated that it considered that the proposal by Roundhouse for a specialty station to serve Vancouver would be a positive addition to the market. The Commission considered the programming diversity achieved first and foremost through its focused local spoken word programming (minimum of 50% spoken word programming), complemented by Canadian music requirements that are higher than the regulatory minimums, to be important factors in its decision to license Roundhouse.
19. Roundhouse first applied for a licence through a competitive application process and made key programming commitments for CIRH-FM. The Commission granted CIRH-FM's licence in large part based on those commitments. The Commission considers that approving the requested licence amendments during the first licence term would undermine the integrity of the licensing process.
20. Furthermore, the applicant's current programming conditions of licence should not significantly hinder the vision for the revamped station, given that the station would maintain its commitment to broadcast a minimum of 50% spoken word programming in

each broadcast week and that the requested amendments solely concern the remaining half of the station's total programming that relates to musical programming. Although the applicant is seeking to achieve a particular sound and music mix for the relaunched Roundhouse station, the Commission is of the view that there should be sufficient content category 2 content, including Canadian content, to fill the remaining 50% of the station's total programming, if the applicant were to follow through on its intent to minimize or eliminate music from content category 3.

21. Consequently, the Commission **denies** the applicant's request to amend the conditions of licence relating to Canadian content category 2 and content category 3 musical selections broadcast by the station.

#### **Request to defer the payment of over-and-above CCD contributions**

22. In its original application for a broadcasting licence, Roundhouse committed to making contributions totalling \$1,327,240, over and above the minimum contribution to CCD. The Commission imposed these commitments by condition of licence in Broadcasting Decision 2014-412.
23. According to Commission records, Roundhouse appears to be in non-compliance with the condition of licence. It has not made over-and-above CCD contributions for the 2015-2016, 2016-2017 and 2017-2018 broadcast years and has therefore accrued a combined shortfall of \$580,345.

#### **Applicant's request**

24. The applicant requested authorization to delay the payment of the over and above CCD contributions to the second year of its operation of the station (2019-2020). The applicant proposed the following payment schedule:

<b>Broadcast year</b>	<b>Payment amount</b>
2019-2020	\$350,000
2020-2021	\$350,000
2021-2022	\$350,000
2022-2023	\$350,000

25. This would result in a total of \$1.4 million in over and above CCD contributions, over an eight-year period (but condensed over four years), ending in the 2022-2023 broadcast year. The applicant stated that approval of this payment schedule would help reduce the initial expenses associated with resuming station operations.

#### **Commission's analysis and decision**

26. The Commission typically expects a licensee to demonstrate compliance with existing conditions of licence when it seeks a licence amendment. The Commission also generally expects a licensee to demonstrate that a valid attempt has been made to implement the

condition of licence requirements over a minimum of the station's first licence term. Further, the Commission generally requires CCD contribution shortfall amounts to be expended immediately following a decision regarding an ownership transaction.

27. In this case, the licensee has not fulfilled its CCD contribution obligations since its launch, meaning that three years after the station's launch, recipients have not received any of the funds that were committed to them as part of a competitive process. If the Commission were to approve the payment schedule proposed by the applicant, recipients would not receive any of the committed funds by Roundhouse for a period of over four years from the launch of the station.
28. The Commission acknowledges the financial challenges that lie ahead for South Fraser in acquiring and re-establishing the station; however, it considers that deviating from its general approach of requiring the payment of shortfalls upon approval of a transaction would not be in the public interest. By making the shortfall payment, the applicant would respect its condition of licence, provide the overdue funds to the respective recipients and resume operations in good faith.
29. In light of the above, the Commission **directs** the applicant to expend the shortfall of \$580,345 by **10 September 2019**.
30. The Commission is of the view that granting some flexibility for future payments of the remaining over-and-above CCD contributions would be appropriate under the circumstances. The Commission will therefore allow South Fraser to begin payments of the remaining over and above CCD contributions in the 2020-2021 broadcast year and disperse the sum over three years.
31. Accordingly, the Commission will impose the following payment schedule by condition of licence:

<b>Broadcast year</b>	<b>Payment amount</b>
2020-2021	\$273,219
2021-2022	\$273,219
2022-2023	\$273,219

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

### **Public interest**

#### **Applicant's position**

33. The applicant stated that Roundhouse's goal has been to broadcast locally focused content. South Fraser has a similar vision for the station and wishes to bring new sounds and cohesive flow to CIRH-FM. Approval of the transaction would allow the station to resume broadcasting local talk to its listeners.

34. According to the applicant, this transaction would allow the station to benefit from synergies by distributing the operating costs over two stations. The station's studios would be co-located with CISF-FM Surrey. It would continue to comply with the condition of licence requiring a minimum of 50% spoken word programming and would maintain the original commitment of one hundred hours of local programming.
35. South Fraser argued that improving the station's financial position and getting it back on the air to bring back content relevant to the downtown core would be a net benefit to the system. Further, programs like the Roundhouse Discovery Project, Journalism and Media Arts Scholarships, Aboriginal Media Scholarships and the Designated Group Fund would continue.

#### **Commission's analysis and decision**

36. In Broadcasting Decision 2014-412, the Commission stated that licensing a specialty station in Vancouver would enhance the diversity of news voices in the market. As the station has been off the air since May 2018, resuming operations would bring back the local reflection and diversity of voices envisioned for the Vancouver market. The system would also benefit from the station's high level of Canadian music programming.
37. Additionally, the broadcasting system would benefit from the applicant fulfilling its shortfall payment of \$580,345 and completing its commitment to a sum of \$1.4 million in over and above CCD payments.
38. In light of the above, the Commission finds that the transaction would bring benefits to the Canadian broadcasting system. The Commission recognizes that the applicant indicated that the ownership transaction is conditional on the approval of the proposed licence amendments; however, it must also consider whether the proposed amendments are in the public interest and are consistent with the Commission's policies and practices.

#### **Value of the transaction and allocation of tangible benefits**

39. The Commission's policy regarding tangible benefits is set out in Broadcasting Regulatory Policy 2014-459 (the Tangible Benefits Policy). In that policy, the Commission determined that it would be appropriate to require that tangible benefits generally be provided as part of a change in the effective control of all radio and television programming services.
40. For the purpose of calculating the value of the tangible benefits, the Commission looks at the value of the transaction as a whole, including the value of the gross debt, working capital to be transferred at closing, ancillary agreements, any leases assumed by the purchaser for real property (buildings, studios and offices) and transmission facilities. The value of the leases is calculated over a five-year period. These elements, if relevant, are added to the purchase price.
41. The applicant proposed a value of the transaction of \$958,000. This includes the purchase price (\$600,000), employee contracts (\$58,000), and assumed leases (\$300,000). No debt is assumed as Roundhouse would be acquired debt free.

42. The Commission has established the value of the transaction at \$900,000. It withdrew the amount earmarked for employee contracts (\$58,000) from the value of the transaction because it is related to severance pay that should be paid to the employees by the applicant. Therefore, the value of the transaction is as follows:

<b>Item</b>	<b>Amount</b>
Purchase price	\$600,000
Addition: Leases	\$300,000
<b>Value of the transaction</b>	<b>\$900,000</b>

43. Pursuant to the Tangible Benefits Policy, tangible benefits for a change in the ownership or control of commercial radio stations must generally represent at least 6% of the value of the transaction as determined by the Commission.

44. The applicant requested to be relieved from the payment of tangible benefits indicating that the CCD commitments in the original application are above what the station's revenues could support and that tangible benefits should be waived as the station will already significantly contribute to the system with its CCD contributions.

45. In response to a Commission staff letter, the applicant indicated that it would nonetheless proceed with the transaction if tangible benefits are imposed.

46. Pursuant to the Tangible Benefits Policy, where a request for an exception to the application of the policy is sought, the onus is on the applicant to show that the exception is in the public interest and meets all of the following criteria:

- the undertaking to be acquired is not in its first licence term (many undertakings take up to one full term from the time of licensing to achieve profitability);
- the undertaking has suffered significant financial losses over an extended period of time (that is, for at least five consecutive years following the first licence term); and
- the purchaser demonstrates that there is a public interest either for the broadcasting system as a whole or the community served in maintaining the failing undertaking.

47. In regard to CIRH-FM, the station does not meet the first two criteria as it is still in its first licence term.

48. With respect to the third criterion, while Roundhouse will face challenges in re-establishing the station, the Commission considers that an annual tangible benefits contribution of \$7,714 would not result in an unreasonable financial burden on the station and would satisfy the requirements of the Tangible Benefits Policy.



49. Accordingly, the Commission **denies** the applicant's request for an exception to the Tangible Benefits Policy.
50. Based on the revised value of the transaction and consistent with the Tangible Benefits Policy, the Commission **directs** the applicant to pay tangible benefits amounting to \$54,000 (6% of the revised value of the transaction), to be allocated as follows in equal annual payments over seven consecutive broadcast years:
- 3% (\$27,000) to Radio Starmaker Fund or Fonds Radiostar;
  - 2% (\$18,000) to FACTOR; and
  - 1% (\$9,000) to the Community Radio Fund of Canada.

### **Other instances of non-compliance**

51. In addition to the non-compliance relating to CCD contributions, the licensee appears to be in non-compliance with section 9(2) of the *Radio Regulations, 1986* (the Regulations) relating to the filing of complete annual returns. Section 9(2) of the Regulations requires radio station licensees to file annual returns with the Commission by 30 November of each year for the broadcast year ending on the previous 31 August. The specific filing requirements are set out in Broadcasting Information Bulletin 2011-795.
52. Since 2015, the annual returns must include Form 1411 – Emergency Alert Implementation Report (the NPAS form) regarding the steps taken to ensure compliance with the alerting requirements set out in Broadcasting Regulatory Policy 2014-444.
53. According to Commission records, the annual returns and the financial statements for the 2015-2016 and 2016-2017 broadcast years were filed late, following a request from Commission staff. The annual return for the 2017-2018 broadcast year was filed on time but was missing financial statements.
54. The NPAS forms for the 2015-2016 and 2016-2017 broadcast years were filed late. While the NPAS form was filed on time for the 2017-2018 broadcast year, it was incomplete.
55. In a letter dated 23 August 2018, the licensee explained that the station's management had informed the board of directors that all Commission reporting requirements had been met and that it was unaware that there was an issue until Commission staff informed the licensee. The licensee has not had an opportunity to comment on the non-compliance which occurred in the 2017-2018 broadcast year given that the applications were published prior to the deadline to file the annual return.
56. The Commission's approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2014-608. Under that approach, each instance of non-compliance is evaluated in its context and in light of factors such as the quantity, recurrence and seriousness of the non-compliance. The circumstances, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.

57. The Commission **directs** the applicant to file the missing financial statements for the 2017-2018 broadcast year by **10 September 2019**.
58. The Commission will consider compliance with regulatory requirements and conditions of licence at the time of the station's licence renewal and may impose further measures at that time.

## Conclusion

59. In light of all the above, the Commission finds that the transaction is in the public interest. Accordingly, the Commission **approves** the application by 0971197 B.C. Ltd. for authorization to change its ownership and effective control through the transfer of all its issued and outstanding shares to South Fraser Broadcasting Inc.
60. The Commission **denies** the request to amend conditions of licence relating to the broadcast of Canadian musical selections.
61. The Commission **approves in part** the request for a deferral of payments for CCD contributions. The Commission **directs** the applicant to expend the CCD shortfall of \$580,345 by **10 September 2019**. The Commission is nonetheless granting the applicant some flexibility in future CCD payments and is imposing a new payment schedule for these payments. **Conditions of licence** to this effect are set out in the appendix to this decision.

Secretary General

## Related documents

- *Notice of applications received*, Broadcasting Notice of Consultation CRTC 2018-434, 26 November 2018
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444, 29 August 2014
- *Licensing of new radio stations to serve Surrey and Vancouver*, Broadcasting Decision CRTC 2014-412, 6 August 2014
- Filing annual returns for radio programming undertakings, *Broadcasting Information Bulletin CRTC 2011-795*, 20 December 2011

- *Revised criteria for the application of the licence trafficking policy*, Broadcasting Information Bulletin CRTC 2010-220, 19 April 2010
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008

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

## Appendix to Broadcasting Decision CRTC 2019-204

### Terms, conditions of licence, expectation and encouragement for the English-language specialty commercial radio programming undertaking CIRH-FM Vancouver, British Columbia

#### Terms

The licence will expire 31 August 2020.

#### Conditions of licence

1. The licensee shall adhere to the conditions set out in the broadcasting licence for the undertaking as well as the conditions set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, with the exception of condition of licence 7.
2. The licensee shall operate the station within the specialty format as defined in *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995, and *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010.
3. The licensee shall devote more than 50% of the programming broadcast each broadcast week to programming drawn from category 1 (spoken word).
4. 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*, as amended from time to time, in any broadcast week:
  - devote, in that broadcast week, a minimum of 50% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety; and
  - 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 50% of its musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety.
5. The licensee shall, as an exception to the percentage of Canadian musical selections set out in section 2.2(3) of the *Radio Regulations, 1986*, as amended from time to time, devote, in each broadcast week, a minimum of 50% of its musical selections from content category 3 (Special Interest Music) to Canadian selections and schedule them in a reasonable manner throughout each broadcast day.
6. In order to make up the shortfall in Canadian content contributions (CCD) identified in this decision, the licensee shall contribute \$580,345 to CCD by no later than 10 September 2019 and provide proof of payment and eligibility to the Commission by no later than 30 November 2019. Of this amount, the licensee shall allocate \$116,069 to

FACTOR. The remaining amount 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.

7. In addition to the required 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, beginning in the 2020-2021 broadcast year, make a total contribution of \$819,657 over three consecutive broadcast years to the promotion and development of Canadian content and allocated each year as follows:

Broadcast year	Payment amount
2020-2021	\$273,219
2021-2022	\$273,219
2022-2023	\$273,219

The licensee shall allocate the following amounts of its additional annual CCD contribution to FACTOR:

Broadcast year	Payment amount
2020-2021	\$54,644
2021-2022	\$54,644
2022-2023	\$54,644

The remaining amounts of this additional CCD contribution 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.

### **Expectation**

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

### **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.