



## Broadcasting Decision CRTC 2007-427

Ottawa, 14 December 2007

**3937844 Canada Inc.**  
Calgary, Alberta

*Application 2007-0261-4, received 19 February 2007*  
*Broadcasting Public Notice CRTC 2007-65*  
*19 June 2007*

### **CIQX-FM Calgary – Licence amendment and renewal**

*The Commission **renews** the broadcasting licence for the English-language commercial FM radio station CIQX-FM Calgary from 1 March 2008 to 31 August 2014. The Commission also **approves** the licensee's request to amend CIQX-FM's licence by deleting the conditions of licence related to its operation within the Specialty FM format.*

### **Introduction**

1. The Commission received an application by 3937844 Canada Inc. (3937844 Canada), a subsidiary of Newcap Inc. (Newcap), to renew the broadcasting licence for the English-language commercial Specialty FM radio programming undertaking CIQX-FM Calgary. The current licence, which was administratively renewed in Broadcasting Decision 2007-284 and Broadcasting Decision 2007-398, expires 29 February 2008.
2. CIQX-FM's licence was initially issued to Telemedia Radio Inc. (Telemedia) in Decision 2001-172 following a competitive hearing held in Calgary in 2000. Broadcasting Decision 2002-91 subsequently approved the application by Standard Radio Inc. (Standard) to acquire the assets of Telemedia, including a new Specialty FM undertaking in Calgary (CIQX-FM). Broadcasting Decision 2002-93 then approved the acquisition of the assets of the new Specialty FM station by 3937844 Canada.
3. As part of its current application, the licensee requested that the station's conditions of licence related to its operation within the Specialty FM format be deleted. Under these conditions of licence, CIQX-FM must
  - operate the station within the Specialty format as defined in Public Notice 1995-60, as amended in Public Notice 2000-14;
  - devote 70% or more of its total weekly music programming to selections from content subcategory 34 (Jazz and blues); and

- devote 35% or more of its musical selections from content category 3 (Special Interest Music) aired during the broadcast week and between 6 a.m. and 6 p.m. Monday through Friday to Canadian selections broadcast in their entirety.
4. Newcap cited significant financial losses in each year of the station's operation and poor ratings as the principal reasons for its request. The licensee suggested that Telemedia's financial projections for the first licence term of the Specialty FM station had been unrealistic. Newcap further maintained that its experience in operating within the Smooth Jazz format during its first licence term demonstrated that this format was not sustainable or viable in Calgary now or in the future, given the conditions of licence associated with its Specialty licence.

### **Interventions**

5. The Commission received interventions in support of and in opposition to the application. The principal opposing intervention was filed jointly by incumbent Calgary licensees Standard,<sup>1</sup> CTVglobemedia Inc. (CTVgm), Rogers Broadcasting Limited (Rogers) and Harvard Broadcasting Inc. (Harvard). The Commission also received an individual intervention opposing the application by Mr. Matthew Jackson. Newcap provided its response to these interventions in a letter dated 7 August 2007.
6. All of the interveners in opposition to the application raised concerns regarding the integrity of the licensing process and the appropriateness of allowing an undertaking licensed as a Specialty FM station to abandon its format, in particular given that this format was a factor in attributing the licence.
7. Standard, CTVgm, Rogers and Harvard also expressed concern that approval of Newcap's proposal could significantly impact the operations of other licensed Calgary radio stations, arguing that approval of the application as proposed would effectively result in a fifth new FM station being launched since the 21 February 2006 Calgary Public Hearing. They also submitted that helping Newcap maintain CIQX-FM's diverse format was a factor in the Commission's decision to grant Newcap a second broadcasting licence for a commercial FM radio station in that hearing.

### **Applicant's reply**

8. In its reply, Newcap noted that the licensing decision for the Calgary Specialty FM station (Decision 2001-172) reviewed each of the criteria used by the Commission in awarding a new commercial radio licence and not only the unique nature of the format.

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<sup>1</sup> In Broadcasting Decision 2007-359, the Commission approved the acquisition by Astral Media Radio (Toronto) Inc. and 4382072 Canada Inc., partners in a general partnership carrying on business as Astral Media Radio G.P., of the assets of the radio and television undertakings owned by Standard.

9. Newcap also stated that it remained committed to providing long-term diversity to the Calgary radio market, indicating that it would continue to expose Smooth Jazz artists to Calgary audiences if granted its request to operate CIQX-FM as a conventional non-Specialty FM station. The licensee added that it was seeking the programming flexibility to grow its audience and to compete on a fair and equitable basis with other Calgary broadcasters in order to increase the level of such exposure. It suggested that the proposed station format would be similar to the New Adult Contemporary/Smooth Jazz format currently offered by CIWV-FM Hamilton/Burlington, which operates as a conventional non-Specialty FM licensee.
10. Finally, Newcap submitted that if the Commission does not allow applicants who have made a good faith attempt to make a diverse format work to change format, they will be unwilling to take the chance to try new and diverse formats.

### **Commission's analysis and determinations**

11. With regard to the licensee's request that its Specialty FM licence conditions be deleted, the Commission evaluates such applications on a case-by-case basis. As a general rule, the Commission expects that applicants awarded licences in competitive situations maintain their commitments for at least the first term of their licence. The Commission notes that Newcap has met its Specialty FM format obligations over its first licence term, despite significant losses.
12. In approving various Smooth Jazz format applications between 2000 and 2003, the Commission took into consideration the musical diversity the format promised to bring to Canadian listeners. At the same time, however, the Commission recognized that this was a new format being introduced to the Canadian radio market. In the absence of a track record for the format in Canada, all audience and financial projections offered by Smooth Jazz applicants were of necessity based primarily on the US format model superimposed on the Canadian marketplace. As a consequence, the Commission was aware that it would take some time to determine if the Smooth Jazz format as envisioned by the various applicants would be sustainable in their respective markets. Consensus held that a five- to seven-year maturation period would determine the format's viability therein. Further, the Commission derived additional comfort from the fact that the applicants licensed were all experienced broadcasters that asked for an opportunity to introduce "something new" to the Canadian radio landscape.
13. The Commission notes the licensee's commitment to maintaining some level of Smooth Jazz music. The Commission reminds Newcap that it has indicated in Broadcasting Public Notice 2006-158 (the 2006 Commercial Radio Policy) its plans to amend the *Radio Regulations, 1986* (the Regulations) in order to require that at least 20% of subcategory 34 selections aired during each broadcast week by commercial radio stations be Canadian.

14. In making its decision, the Commission has also taken into account the fact that the Calgary radio market is healthy and that projections for future growth in the market are positive. The Commission considers that the granting of Newcap's request to delete the above-noted conditions would not have an impact on the integrity of the licensing process flowing from the February 2006 Calgary Public Hearing, nor be inconsistent with the rationale for granting Newcap a second commercial licence set out in Broadcasting Decision 2006-323. In that decision, the Commission did not link approval of the new FM station with any requirement that Newcap maintain CIQX-FM's Specialty FM format. The Commission's concerns in this area were limited to addressing the issue of competitive imbalance.
15. In light of all of the above, the Commission **approves** the licensee's request to amend CIQX-FM's licence by deleting the conditions of licence related to its operation within the Specialty FM format.
16. Based on its review of the application and the licensee's past performance, the Commission also **renews** the broadcasting licence for the English-language commercial FM radio programming undertaking CIQX-FM Calgary from 1 March 2008 to 31 August 2014. The licence will be subject to the **conditions** set out in Public Notice 1999-137, with the exception of condition of licence number 5, as well as to the **conditions** set out in the appendix to this decision.

### **Canadian content development**

17. In its 2006 Commercial Radio Policy, the Commission set out a new approach to the development and promotion of Canadian artists. In order to reflect a new emphasis on development initiatives that lead to the creation of audio content for broadcast using Canadian resources, the Commission replaced the expression "Canadian talent development" (CTD) with "Canadian content development" (CCD). Under the new policy, each radio station holding a commercial radio licence is required to make a basic annual CCD contribution based on its total broadcast revenues in the previous broadcast year. This requirement will be reflected in the Regulations. Until such time, it will be implemented by a transitional condition of licence, as set out in the appendix to this decision. This condition of licence will expire upon the coming into force of the amendments to the Regulations.

### **Additional expenditures**

18. In Broadcasting Public Notice 2002-19, the Commission addressed the acquisition, first by Standard and then by 3937844 Canada, of the FM station in Calgary licensed to Telemedia in Decision 2001-172.

19. In Broadcasting Decision 2002-93, the Commission noted that 3937844 Canada would assume the commitments to CTD initiatives made by Telemedia in its licence application for the Calgary station, i.e. \$8,000 per year of the licence term to an eligible third party or parties and an additional \$210,000 per year of the licence term to various CTD initiatives. Given that these CTD expenditures were outstanding at the time of 3937844 Canada's acquisition of the assets, the licensee is to continue with the remaining portion of these expenditures until 31 August 2009.
20. In Broadcasting Decision 2002-93, the Commission also noted the value of the benefits package accruing from the acquisition of the Calgary station and other stations in the amount of \$2,358,000 (6% of \$39.3 million) payable over seven years.
21. The Commission notes Newcap's commitment to contribute a minimum of \$338,571 each broadcast year for the years ending 31 August 2008 and 2009 to fulfill the remaining portion of the required benefits (\$120,571/year) and CTD (\$210,000/year) expenditures flowing from the purchase of CIQX-FM.

### **Employment equity**

22. 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, its employment equity practices are not examined by the Commission.

Secretary General

### **Related documents**

- *Administrative renewal*, Broadcasting Decision CRTC 2007-398, 9 November 2007
- *Administrative renewal*, Broadcasting Decision CRTC 2007-284, 9 August 2007
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Adult Album Alternative FM radio station in Calgary*, Broadcasting Decision CRTC 2006-323, 2 August 2006
- *3937844 Canada Inc., a subsidiary of Newcap Inc., acquires the assets of radio stations in Alberta*, Broadcasting Decision CRTC 2002-93, 19 April 2002
- *Introductory statement to Broadcasting Decisions CRTC 2002-91 to 2002-93: Transfer of the assets of the radio, television and network undertakings in Ontario, Alberta and British Columbia formerly held by Telemedia*, Broadcasting Public Notice CRTC 2002-19, 19 April 2002

- *Three new radio stations to serve Calgary*, Decision CRTC 2001-172, 12 March 2001
- *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000
- *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999
- *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995

*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 2007-427

### Conditions of licence

1. The licence shall be subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, with the exception of condition of licence number 5.
2. The licensee shall make a basic annual contribution to Canadian content development (CCD). The amount of the contribution shall be determined in accordance with the policy set out in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006 (Public Notice 2006-158), as amended from time to time.

The licensee shall allocate 60% of this basic annual CCD contribution to FACTOR or MUSICACTION.

The remainder of the annual basic contribution to CCD shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives in Public Notice 2006-158.

This condition of licence shall expire upon the coming into force of the amendments to the *Radio Regulations, 1986* relating to CCD.

3. For the broadcast years ending 31 August 2008 and 31 August 2009, the licensee shall make additional direct cost expenditures of a minimum of \$338,571 per year to an eligible third party or parties to support Canadian talent.