



## Broadcasting Decision CRTC 2011-369

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Route reference: 2011-55

Ottawa, 9 June 2011

### **Intercity Broadcasting Network Inc.**

Toronto, Ontario

*Application 2010-1103-0, received 7 July 2010*

*Public hearing in the National Capital Region*

*5 April 2011*

### **English-language FM radio station in Toronto**

*The Commission **approves** an application for a broadcasting licence to operate an English-language commercial specialty FM radio station in Toronto.*

#### **The application**

1. The Commission received an application by Intercity Broadcasting Network Inc. (Intercity) for a broadcasting licence to operate an English-language commercial specialty FM radio programming undertaking in Toronto.
2. Intercity is controlled by A. Fitzroy Gordon through his ownership and control of Maja Media Group Inc., Intercity's majority shareholder.
3. The new station would operate on frequency 98.7 MHz (channel 254B1) with an average effective radiated power (ERP) of 446 watts (maximum ERP of 1,000 watts with an effective height of antenna above average terrain of 276.8 metres).
4. The station would be targeted to the local Caribbean and African communities and would offer a World Beat and Non-Classic Religious Music format, with at least 50% of its weekly music drawn from content subcategory 33 (World beat and international). The service would broadcast no less than 75 hours of local programming each broadcast week, including 5 hours and 40 minutes of news. Thirty-five percent of news stories would relate to local issues. Spoken word programming would represent 10% of all programming, including hourly newscasts, weather forecasts, talk shows and forums, as well as programming relating to youth affairs, women's issues, sports and local community events. Intercity indicated that it would include in-depth discussion on issues affecting local communities and that a maximum of six hours of programming per broadcast week would be in a third language.
5. The applicant also proposed to exceed the basic contribution to Canadian content development by providing a total of \$249,545 in additional contributions, to be

allocated as follows over seven consecutive broadcast years upon commencement of operations: \$35,800 in year one, \$37,024 in year two, \$36,330 in year three, \$36,346 in year four, \$36,330 in year five, \$36,296 in year six and \$36,418 in year seven.

6. Finally, Intercity indicated that its application was essentially the same as the application approved by the Commission in Broadcasting Decision 2006-135.

## **Background**

7. In Broadcasting Decision 2006-135, the Commission approved in part an application by A. Fitzroy Gordon, on behalf of a corporation to be incorporated, for a broadcasting licence to operate an English-language commercial specialty FM radio station in Toronto. The applicant was required to file an application proposing the use of another frequency and technical parameters that would be acceptable to the Commission and the Department of Industry (the Department) for use in the Toronto market.
8. Despite efforts to identify a frequency and technical parameters acceptable to the Commission and the Department, no application was submitted within the prescribed period and consequently the authorization lapsed. Subsequently, efforts were undertaken to find an acceptable frequency. Permission was obtained from the Department to test a signal on 98.7 MHz (channel 254), which is second adjacent to 99.1 MHz (channel 256), the frequency on which the Canadian Broadcasting Corporation (CBC) station CBLA-FM operates.
9. Following this testing and in reviewing the proposed technical parameters contained in the current application, the Commission was advised by the Department that the application was conditionally technically acceptable as a special case.

## **Interventions**

10. The Commission received several interventions in support of the application, as well as a comment by the CBC, a joint submission by Rogers Media Inc., Astral Media Radio Inc. and CTV Limited and a comment by the President of Durham Radio Inc., Mr. Douglas Kirk.
11. In their comments, both the CBC and the joint interveners indicated that they did not oppose the application but rather wished to express concerns regarding the way that the Department had authorized the use of 98.7 MHz, a frequency second adjacent to a CBC station, by the applicant. The CBC also indicated that given the Department's decision to make an exception to its second adjacent policy, the ownership or control of the station, if licensed, should not be transferable. In this respect, the CBC noted that the Commission's licence trafficking policy<sup>1</sup> applies only to licences that have

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<sup>1</sup> The licence trafficking policy is set out in Broadcasting Regulatory Policy 2008-4 and Broadcasting Information Bulletin 2010-220.

been issued following a competitive process and as such expressed concern that Intercity could transfer the ownership or control of its station to another entity at any point in time and that the new owner could change the format and focus of the station. The CBC requested that the Commission impose a condition of licence that would restrict the licensee from transferring its ownership or control to another entity during its licence term.

12. In his comment, Mr. Kirk indicated that as a result of a contractual dispute with the applicant, he had commenced legal action in the Superior Court of Ontario seeking an order granting him an ownership stake in Intercity. Mr. Kirk asked that the Commission delay the consideration of the application and reschedule it to a future hearing at a date to be determined once the court proceeding is resolved.

#### **Applicant's reply**

13. In the case of the interventions regarding the authorization to use 98.7 MHz, the applicant indicated that this objection should be directed to the Department, which has the responsibility for spectrum management, and not the Commission.
14. Regarding the request by the CBC that the Commission impose a condition of licence restricting the licensee from transferring the proposed station's ownership or control, Intercity indicated that such a condition was unnecessary because any future sale of the undertaking would require a public process and the Commission's prior approval.
15. Finally, in response to the intervention by Mr. Kirk, the applicant stated that actions before the civil courts should not prevent the Commission from proceeding with applications and that the intervention was an attempt to secure an advantage in a lawsuit which did not affect the control of the company that was applying to the Commission.

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

16. With respect to the interventions by the CBC and the joint interveners, the Department has advised the Commission that the application for a second adjacent frequency is conditionally technically acceptable as a special case. The Department has also clarified that it is the applicant's responsibility to solve any valid cases of interference caused to the affected stations identified in the technical certificate of acceptance. The Commission therefore acknowledges the limitations on the frequency use as indicated in the technical certificate of acceptance.
17. The Commission notes the concern expressed by the CBC regarding the possible transfer of ownership or control of the licensee during its licence term. However, the Commission notes that the licence trafficking policy does not prohibit changes in effective control, but rather sets out certain considerations to be taken into account when an application is filed with the Commission. As noted by the applicant, any change in effective control would require the Commission's prior approval and would likely result in a public process. Because an application for a change in effective control has not been filed and the documents on the public record of this proceeding

do not provide any evidence that such an application is forthcoming, the Commission considers the CBC's request for a condition of licence restricting the transfer of the proposed station's ownership or control to be premature.

18. Finally, the Commission notes the request to defer consideration of the current application pending the outcome of the litigation by Mr. Kirk. The Commission notes that the litigation could extend over a long period of time. The Commission is of the view that the resolution of the court proceeding is not likely to alter the effective control of Intercity, but notes that any outcome resulting in changes to Intercity's ownership must be reported to the Commission. In light of the above, the Commission does not consider that the status of the litigation impacts the Commission's ability to render a decision on the Intercity application at this time.

## Conclusion

19. The Commission notes that the applicant is proposing essentially the same service to the same communities as the one proposed and approved in Broadcasting Decision 2006-135. The Commission is convinced that the proposed service will add cultural and racial diversity and will benefit the Caribbean and African communities of Toronto with its spoken word programming and musical format. In view of this distinct programming offering, the Commission considers it appropriate to impose **conditions of licence** to ensure that the programming orientation described in the application is maintained.
20. In light of all of the above, the Commission **approves** the application by Intercity Broadcasting Network Inc. for a broadcasting licence to operate an English-language commercial specialty FM radio programming undertaking in Toronto. The terms and **conditions of licence** are set out in the appendix to this decision.
21. The Commission reminds the licensee of the Canadian content requirements set out in section 2.2. of the *Radio Regulations, 1986* concerning the broadcast of selections from content categories 2 (Popular Music) and 3 (Special Interest Music).

Secretary General

## Related documents

- *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
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *English-language FM radio station in Toronto*, Broadcasting Decision CRTC 2006-135, 10 April 2006

- *The Issuance of Calls for Radio Applications*, Public Notice CRTC 1999-111, 8 July 1999

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

## Appendix to Broadcasting Decision CRTC 2010-369

### Terms, conditions of licence, expectations and encouragement

#### Issuance of the broadcasting licence to operate an English-language commercial specialty FM radio programming undertaking in Toronto, Ontario.

The licence will expire 31 August 2017.

The station will operate at 98.7 MHz (channel 254B1) with an average effective radiated power of 446 watts (maximum ERP of 1,000 watts with an effective height of antenna above average terrain of 276.8 metres).

In order to comply at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998, the Commission requires the applicant to file an amended and executed copy of its shareholders agreement, as well as amended and executed by-laws of the licensee's shareholder corporations, within 30 days following the date of this decision.

The Department of Industry (the Department) has advised the Commission that while this application is conditionally technically acceptable, it will only issue a broadcasting certificate when it has determined that the proposed technical parameters will not create any unacceptable interference with aeronautical NAV/COM services.

The Commission reminds the applicant that pursuant to section 22(1) of the *Broadcasting Act*, no licence may be issued until the Department notifies the Commission that its technical requirements have been met and that a broadcasting certificate will be issued.

Furthermore, the licence for this undertaking will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 9 June 2013. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this date.

#### Conditions of licence

1. The licence shall be subject to 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 7.
2. The station shall be operated within the specialty format as defined in *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000, and *A review of certain matters concerning radio*, Public Notice CRTC 1995-60, 21 April 1995, as amended from time to time by the Commission.

3. The licensee shall devote at least 50% of all musical selections broadcast in each broadcast week to programming drawn from content subcategory 33 (World beat and international).
4. During each broadcast week, the licensee shall devote a minimum of 10% of its programming to spoken word programming consisting of news, surveillance and in-depth discussion on issues relating to and affecting local communities.
5. During each broadcast week, the licensee shall broadcast a minimum of 5 hours and 40 minutes of news.
6. 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 make a contribution of \$249,545 to CCD, to be allocated as follows over seven consecutive broadcast years upon commencement of operations: \$35,800 in year one, \$37,024 in year two, \$36,330 in year three, \$36,346 in year four, \$36,330 in year five, \$36,296 in year six and \$36,418 in year seven.

Of this amount, the licensee shall allocate no less than 20% per broadcast year to FACTOR. 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.

7. The applicant is required to file an annual report by 30 November of each year providing specific details on the manner in which it has fulfilled its programming requirements in serving the Caribbean and African communities of Toronto with its spoken word programming and musical format.

## **Expectation**

### **Cultural diversity**

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

### **Encouragement**

#### **Employment equity**

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.