



## Broadcasting Decision CRTC 2012-381

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Route reference: 2012-277

Ottawa, 16 July 2012

### **High Fidelity HDTV Inc.**

Across Canada

*Application 2012-0105-3, received 30 January 2012*

### **Change in effective control**

*The Commission **approves** the application by High Fidelity HDTV Inc. for authority to change its effective control and the control of its subsidiaries so that control is exercised by Blue Ant Media Inc.*

### **Introduction**

1. The Commission received an application by High Fidelity HDTV Inc. (High Fidelity), pursuant to section 10(4)(a) of the *Specialty Services Regulations, 1990*, for authority to change its effective control and the control of its subsidiaries so that control will be exercised by Blue Ant Media Inc. (Blue Ant).
2. High Fidelity is currently held by HFB Canada Acquisitions Holdings Inc. (HFB Canada), a subsidiary of Blue Ant, which holds 29.9% of the voting interest, and by 14 minority shareholders, who collectively hold 70.1% of the voting interest. High Fidelity is controlled by its shareholders pursuant to the terms of a unanimous shareholders' agreement.
3. High Fidelity owns through its subsidiaries the Category 2 specialty services radX (formerly Rush HD), HIFI (formerly Treasure HD), Oasis HD, eqhd (formerly Equator HD) and three other Category 2 specialty services not yet in operation, namely The Wedding Channel, WHD and WSD.
4. Blue Ant owns through its subsidiary GlassBOX Television Inc. the specialty Category B services BITE Television and AUX TV, as well as five other specialty Category B services and one specialty Category C service not yet in operation. It also owns the specialty Category A service travel + escape through its subsidiary 7506465 Canada Inc.
5. Pursuant to the Share Purchase Agreement, HFB Canada will acquire 58.4% of High Fidelity's voting interest for a total of 88.3% voting interest, and Blue Ant will acquire the remaining 11.7% voting interest.

6. Following the transaction, High Fidelity will be controlled by Blue Ant, a corporation wholly owned and controlled by Michael MacMillan.
7. Pursuant to the terms of the Share Purchase Agreement, the purchase price for the transaction is \$85 million. This price includes the shares (i.e. 29.9%) acquired by HFB Canada in the share capital of High Fidelity in December 2011. High Fidelity proposed a tangible benefits package representing 10% of the value of the transaction.
8. The Commission received an intervention by the Canadian Media Production Association (CMPA), to which the applicant replied. The CMPA supported the application on the condition that the Commission require that a minimum of 75% of the tangible benefits be allocated to independently produced programming and include advisory language regarding terms of trade in its decision. The complete record for this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
9. Having examined the public record relating to this application in light of applicable policies and regulations, the Commission considers that the issues it must address are the following:
  - the value of the transaction; and
  - the proposed tangible benefits.

**Value of the transaction**

10. Because the Commission does not solicit competing applications for authorization to change the ownership or control of radio, television and other programming undertakings, the onus is on the applicant to demonstrate that the proposed value of the transaction is acceptable and reasonable.
11. This transaction involves regulated and unregulated assets. In such cases, the Commission's practice is first to determine the value of the transaction and then to allocate it between regulated and unregulated assets based on the allocation of the purchase price.
12. The purchaser will be assuming leases in the amount of \$5,552,290. In accordance with the Commission's practice, this amount is included in the value of the transaction, which consequently increases to \$90,552,290, as shown below:

**Value of the transaction**

Purchase price	\$85,000,000
Add:	
Assumed leases	\$5,552,290
<b>Total</b>	<b>\$90,552,290</b>

13. When the transaction value has to be allocated between regulated and unregulated assets, the Commission generally requires that a valuation report be filed. In Broadcasting Public Notice 2008-57, the Commission indicated that its preferred methodology for determining the value of assets was the discounted cash flow (DCF) methodology. However, the Commission realizes that there may be circumstances where the preparation of a DCF valuation report may cause an undue financial hardship on the applicant. In those cases, an applicant may use a different methodology if it can demonstrate to the Commission that using the DCF methodology would cause an undue financial hardship and that the methodology chosen by the applicant stands the test of reasonableness, is consistent and is the most appropriate under the circumstances (Broadcasting Public Notice 2007-139).
14. The applicant submitted that no formal valuation was performed as part of the transaction. The informal valuation of the whole of High Fidelity was conducted on an earnings before interest, taxes, depreciation and amortization (EBITDA) multiple basis. Specifically, the applicant calculated the percentage of the EBITDA for the unregulated assets in relation to the EBITDA for the whole of High Fidelity and allocated the value of the transaction on that basis. To be conservative and based on certain comparisons of multiples, the applicant reduced the value to provide a lower value for unregulated assets.
15. According to the EBITDA percentage approach, the unregulated assets would represent 15.7% of High Fidelity's EBITDA. This ratio results in a value of \$13,345,000 for the unregulated assets. After the review of multiples, the applicant assigned a value of \$9,915,830 to the unregulated assets (11.7% of total EBITDA), which would result in a value of \$75,084,170 for the regulated assets (88.3% of total EBITDA).
16. The Commission is of the view that this approach is reasonable under the circumstances and that it was applied in a reasonable manner. The Commission has accordingly allocated the value of the transaction (as revised at paragraph 12 above) between regulated and unregulated assets based on the applicant's allocation percentages for the purchase price. As shown in the table below, the value of the transaction for the unregulated assets amounts to \$10,594,618 and the value for the regulated assets subject to tangible benefits to \$79,957,672.

### Allocation of the value of the transaction

	Purchase price assigned (applicant)  (a)	% of purchase price based on (a)  (b)	Allocation of revised value of transaction based on % in (b)  (c)
Unregulated assets	\$9,915,830	11.7%	\$10,594,618
Regulated assets	\$75,084,170	88.3%	\$79,957,672
<b>Total</b>	<b>\$85,000,000</b>	<b>100%</b>	<b>\$90,552,290</b>

### Proposed tangible benefits

17. As set out in Public Notice 1999-97, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits representing 10% of the value of a transaction, as accepted by the Commission. Such benefits should be incremental in nature and be directed to the communities served and the broadcasting system as a whole. In addition, tangible benefits expenditures for all television assets should:

- be directed to projects and initiatives that would not normally be undertaken or realized in the absence of the transaction; and
- generally flow to third parties, such as independent producers.

18. The applicant proposed a tangible benefits package of \$7,788,232 (i.e., 10% of the proposed value of the transaction relating to regulated assets). Given the revised value of the transaction relating to regulated assets, the value of the tangible benefits package rises to \$7,995,767 (i.e., 10% of \$79,957,672).

19. Benefits are generally required to be spent equitably over seven years. In this case, the applicant proposed to “front-end load” its spending of the benefits. The Commission is satisfied with the applicant’s proposal.

### Onscreen programming and other elements

20. The Commission’s general approach is to have the majority (approximately 85%) of the tangible benefits package directed to onscreen programming. The applicant proposed that all of the funds be spent on Canadian programming through the Blue Ant Multiscreen Fund. This fund would expand its scope to target programming created for broadcast on the four existing high-definition services currently operated by High Fidelity in the travel, music, comedy and other genres.

21. The applicant confirmed that the fund is self-administered and that none of the tangible benefits amounts will be used to fund administrative costs.

22. The Commission is satisfied with the applicant's proposal that all funds will go to onscreen programming, as well as with its other commitments above, which are consistent with the Commission's general practice.

#### **New media content**

23. The applicant proposed that no more than 10% of the benefits would be spent on stand-alone new media content.

24. The Commission notes that this proposal is consistent with Broadcasting Regulatory Policy 2010-833 and with the approach of the Canada Media Fund. Accordingly, the Commission accepts the applicant's proposal.

#### **Measuring incrementality**

25. The applicant confirmed that all of the funds would be spent on initiatives that are incremental to what High Fidelity would otherwise spend on Canadian programming.

26. The applicant noted that the Commission's practice regarding Category B services has been to use the average of a service's last three years of expenditures on Canadian programming as the baseline for calculating incrementality. The applicant proposed to adopt this approach in the present case.

27. The Commission is satisfied with the applicant's commitment that the funds will be spent on initiatives that are incremental to High Fidelity's Canadian programming expenditure obligations, as well as with its method of calculation, which is consistent with Commission practice.

#### **Independent production**

28. The applicant acknowledged that directing 75% of the tangible benefits resulting from this transaction to independent production, as proposed by the CMPA, would be consistent with its recent ownership transaction approved in Broadcasting Decision 2011-585. The applicant indicated that it would accept this proposal if the Commission deemed it appropriate. However, it requested that the Commission set this requirement at the lower level of 50%.

29. As noted above, the Commission's policy is that tangible benefits expenditures for all television assets should generally flow to third parties, such as independent producers. Overall, the Commission finds that the applicant's proposal is consistent with the policy, while allowing it some flexibility to create incremental, new Canadian programming. Accordingly, in the context of this application, the Commission is satisfied that the proposed level of 50% is appropriate.

## Other matters

30. The applicant confirmed that it would accept the standard conditions of licence for Category B specialty services set out in Broadcasting Regulatory Policy 2010-786-1.
31. In regard to the issue of terms of trade and the CMPA's request that advisory language regarding terms of trade be included in this decision, the Commission considers that the appropriate forum to address this matter is at the licence renewals for the services, which are currently scheduled to take place prior to 31 August 2013.

## Conclusion

32. In light of all of the above, the Commissions **approves** the application by High Fidelity HDTV Inc. for authority to change its effective control and the control of its subsidiaries so that control is exercised by Blue Ant Media Inc.

Secretary General

## Related documents

- *AUX TV, BITE Television and travel + escape – Change of effective control*, Broadcasting Decision CRTC 2011-585, 14 September 2011
- *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
- *Contributions to Canadian programming by broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2010-833, 9 November 2010
- *Allocation of the transaction value in changes in changes in the effective control of broadcasting undertakings – Information bulletin*, Broadcasting Public Notice CRTC 2008-57, 30 June 2008
- *Call for comments on ways to streamline the determination of the allocation of the value of the transaction in changes in the effective control of a broadcasting undertaking*, Broadcasting Public Notice CRTC 2007-139, 14 December 2007
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999

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