Broadcasting Decision CRTC 2006-458

Ottawa, 31 August 2006

MZ Media Inc.
Toronto and Cobourg, Ontario

Application 2006-0253-3
Public Hearing in the National Capital Region
1 August 2006

CFMX-FM-1 Toronto, CFMX-FM Cobourg and CFMX-DR-1 Toronto – Acquisition of assets

*The Commission **approves** the application by MZ Media Inc. for authority to acquire the assets of the English-language specialty radio programming undertaking CFMX-FM-1 Toronto, its transmitter CFMX-FM Cobourg and of the English-language transitional digital radio undertaking CFMX-DR-1 Toronto, from Trumar Communications Inc., and for broadcasting licences to continue the operation of these undertakings.*

The application

1. The Commission received an application by MZ Media Inc. ("MZ Media" or "the applicant") for authority to acquire the assets of the English-language specialty radio programming undertaking CFMX-FM-1 Toronto, its transmitter CFMX-FM Cobourg and of the English-language transitional digital radio undertaking CFMX-DR-1 Toronto, from Trumar Communications Inc., and for broadcasting licences to continue the operation of these undertakings.

2. The vendor, Trumar Communications Inc., is currently owned and controlled by Mr. Martin Rosenthal. MZ Media is wholly-owned and controlled by Mr. Moses Znaimer.

3. The applicant stated that the value of the proposed transaction would be $12 million. MZ Media explained that the purchase price was not based on multiples of Profit Before Interest and Tax (PBIT) or multiples of sales. Rather, according to MZ Media, the value of the transaction was arrived at after negotiation and was based on MZ Media's estimate of the vendor's investment over the years. MZ Media explained its plans to increase the station's advertising and other revenues, stating that it intends to attract more youthful listeners, increase the perceived value to advertisers of its older listeners, and grow via new licences and the Internet.

4. In its application, MZ Media asked to be exempt from paying benefits in the form of a minimum direct financial contribution to Canadian talent development (CTD) of 6% of the value of the transaction, as stipulated in *Commercial Radio Policy*, Public Notice CRTC 1998-41, 30 April 1998 (Public Notice 1998-41). According to the applicant, a strong case could be made that CFMX-FM-1 is not and has not been profitable and, therefore, that the benefits policy should not be applied with respect to this ownership transaction. MZ Media submitted financial information in support of its contention that the station was not profitable.

5. MZ Media stated, however, that should the Commission decide to require that tangible benefits representing a minimum of 6% of the value of the transaction be contributed to CTD, it would do so but would direct the $720,000 to youth concert series and outreach groups, subject to certain conditions. MZ Media specified that the funds would be expended over a seven-year term and that they would not be spent equally on a year-by-year basis. Rather, the applicant proposed to make smaller contributions in the initial years, with larger expenditures in years 3 to 7, when in its view, the station would achieve financial stability. MZ Media further indicated that it would increase the station’s current CTD contributions from $20,000 to $27,000 a year and that it was prepared to file annual reports with the Commission in regard to ongoing progress with these projects.

6. With respect to the broadcast of Canadian musical selections, MZ Media proposed to increase its commitment by devoting, in each broadcast week, during the first broadcast year that the station is owned by the applicant, 14% or more of its musical selections from content category 3 to Canadian selections and schedule those selections in a reasonable manner throughout each broadcast day. The applicant has also committed to make annual increases to this level (14%) of 1% per year thereafter, reaching a level of 20% by year 7.

Interventions

7. The Commission received interventions in support of this application and one intervention from the Canadian Independent Record Production Association (CIRPA) commenting on certain aspects of the application. Although CIRPA offered qualified support for MZ Media’s application, it stated that it would prefer that CTD commitments made to organization such as the Shaw Festival and the National Ballet of Canada, which are not focused on music, be redirected to groups that fund the production, distribution and marketing of Canadian classical music.

Applicant’s reply

8. MZ Media stated that it was pleased that its application received support from the interveners and that not a single intervention was received in opposition. With respect to CIRPA’s concern regarding the direction of some of the station’s CTD funds, MZ Media submitted that CFMX-FM-1 was more than just an outlet for recorded music and that it provides listeners with commentary and contextual information concerning the fine and performing arts in general.

Commission's analysis and determinations

9. The Commission **approves** the application by MZ Media Inc. for authority to acquire the assets of the English-language specialty radio programming undertaking CFMX-FM-1 Toronto, its transmitter CFMX-FM Cobourg and of the English-language transitional digital radio undertaking CFMX-DR-1 Toronto, from Trumar Communications Inc., and for broadcasting licences to continue the operation of these undertakings.

10. In Public Notice 1998-41, the Commission stated that it would expect that, in the case of all transfers of ownership and control of radio undertakings, commitments be made to implement clear and unequivocal benefits representing a minimum direct financial contribution to CTD of 6% of the value of the transaction. The Commission stated that it would forgo benefits requirements for unprofitable undertakings, and that it would measure profitability according to the average PBIT of the undertaking over the three years preceding the filing date of the application.

11. After reviewing all of the station's financial information, the Commission has determined that CFMX-FM-1 has been profitable over the past three years. Therefore, in accordance with the policy set out in Public Notice 1998-41, MZ Media is required to pay clear and unequivocal benefits contributions representing a minimum direct financial contribution to CTD of $720,000, or 6% of the value of the transaction. Consistent with Public Notice 1998-41, the Commission will expect financial contributions to be distributed as follows:

- $360,000, representing 3% of the value of the transaction, to be allocated to the Radio Starmaker Fund;
- $240,000, representing 2% of the value of the transaction, to be allocated, at the discretion of the purchaser, to FACTOR or MusicAction; and
- $120,000, representing 1% of the value of the transaction, to be allocated, at the discretion of the purchaser, to either of the above initiatives, to other Canadian talent development initiatives, or to other eligible third parties directly involved in the development of Canadian musical and other artistic talent, in accordance with *Contributions by radio stations to Canadian talent development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995, as may be amended from time to time.

12. With respect to the $120,000, should the licensee decide to allocate this amount to other eligible third parties directly involved in the development of Canadian musical and other artistic talent, the Commission requires that the licensee file a report detailing the ongoing progress of these initiatives with its annual return.

Issuance of the licences

13. The Commission will issue broadcasting licences to MZ Media Inc., upon surrender to the Commission of the licences issued to Trumar Communications Inc.

14. The licence for the English-language specialty radio programming undertaking CFMX-FM-1 Toronto and its transmitter CFMX-FM Cobourg will expire 31 August 2010, the current expiry date. The licence for the English-language transitional digital radio programming undertaking CFMX-DR-1 Toronto will expire 31 August 2007, the current expiry date.

15. The licences will 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 conditions 5 and 8. The licences will also be subject to the **conditions** specified in the appendix to this decision.

Employment equity

16. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the applicant to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Secretary General

This decision is to be appended to each 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 2006-458

Conditions of the licences

1. The licences are 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 conditions 5 and 8.

2. The stations shall be operated 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,* Public Notice CRTC 2000-14, 28 January 2000, as amended from time to time.

3. In each broadcast week, a minimum of 70% of all musical selections broadcast shall consist of musical selections drawn from subcategory 31 (Concert).

4. 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,* in any broadcast week, during first broadcast year that the station is owned by the licensee, devote at least 14% of all musical selections drawn from content category 3 (Special Interest Music) to Canadian selections and schedule those selections in a reasonable manner throughout each broadcast day. This percentage (14%) will increase by 1% per year thereafter, reaching a level of 20% Canadian musical selections drawn from content category 3 by year 7.

   For the purposes of this condition, the terms “broadcast week,” “Canadian selection,” “content category,” and “musical selection” shall have the same meaning as that set out in the *Radio Regulations, 1986*.

5. The licensee shall contribute $27,000 during each broadcast year to direct initiatives for the development of Canadian talent.

   The Commission reminds the licensee that all Canadian talent development expenditures must be made in accordance with the Commission’s policy on qualifying contributions to CTD, as set out in Appendix 1 to *An FM policy for the nineties*, Public Notice CRTC 1990-111, 17 December 1990.

6. The licensee is authorized to use Subsidiary Communications Multiplex Operations (SCMO) channels for the purpose of distributing a commercial Tamil-language service and a commercial Persian-language service, produced by Radio Sedaye Iran.

   With respect to the condition set out above, the licensee is expected to adhere to the guidelines set out in Appendix A to *Services Using the Vertical Blanking Interval (Television) or Subsidiary Communications Multiplex Operation (FM),* Public Notice CRTC 1989-23, 23 March 1989.