



## Broadcasting Decision CRTC 2007-220

Ottawa, 6 July 2007

**Various applicants**  
Sydney, Nova Scotia

*Public Hearing in Membertou, Nova Scotia*  
*16 April 2007*

### **Licensing of new radio stations to serve Sydney, Nova Scotia**

*The Commission **approves** the applications by Barry Maxwell Martin, on behalf of a corporation to be incorporated, and Newcap Inc. for broadcasting licences to operate new FM radio programming undertakings to serve Sydney.*

*The Commission **denies** the remaining applications for broadcasting licences to serve the Sydney radio market.*

### **Introduction**

1. At a public hearing commencing 16 April 2007 in Membertou, Nova Scotia, the Commission considered four competitive applications to serve the radio market in Sydney, Nova Scotia.
2. As part of this process, the Commission received and considered interventions with respect to each of these four applications. The public record for this proceeding is available on the Commission's web site at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings".
3. After reviewing the applications and interventions, the Commission is of the view that the two primary issues to be considered in its evaluation of these applications for new radio stations are the following:
  - Can the Sydney radio market support additional radio stations without an undue negative impact on that market?
  - If so, which of the applications should be approved in light of the factors identified in Broadcasting Public Notice 2006-86 (the Call)?

### **The Sydney radio market and its ability to support new stations**

4. Sydney is the primary city in the Cape Breton Regional Municipality (CBRM), which accounts for approximately 70% of Cape Breton's population. All of the applicants in this proceeding proposed 3mV/m contours that would encompass the entire CBRM.

5. Currently, there is only one commercial licensee serving the Sydney radio market, namely Maritime Broadcasting System Limited (MBS). It operates one FM and two AM stations, all of which cover the entire CBRM. CKPE-FM offers an Adult Contemporary music format that generally appeals primarily to females aged between 35 and 54. CJCB offers a Country music format that usually captures a loyal audience of adults in the 25 to 54 demographic. CHER offers a Classics Hits music format, which serves those between the ages of 25 and 54. In Broadcasting Decision 2006-355, the Commission authorized the conversion of CHER to the FM band. To date, the Commission has not received confirmation that MBS has implemented the new FM station.
6. In its intervention, MBS opposed the licensing of any new commercial radio stations in Sydney at this time. MBS argued that the Sydney radio market is characterized by a declining population as well as below average levels of employment, household income and retail sales. In MBS' view, the Sydney radio market could not support additional radio stations without causing an undue negative financial impact on the incumbent radio stations.
7. While Sydney continues to experience economic challenges, applicants and interveners in this proceeding maintained that Sydney and the larger CBRM show positive signs of future economic growth. As noted by the Sydney and Area Chamber of Commerce, Sydney is home to more than 3,000 businesses, new large retail operations have made substantial investments in Sydney in recent years, and many other development projects are currently in progress. A \$340 million land development program near Louisbourg; a \$400 million Tar Ponds cleanup project; and renewed interest in coal mine production all point to a more stable and growing economy in the CBRM.
8. Statistics Canada's 2006 Census of Canada reports the CBRM's population as 102,250, representing a 3.5% decline since the 2001 Census. Financial Post Markets (FP Markets) 2007 data suggest that the 40 to 64 demographic grew by 5.5% during this five year period. According to FP Markets' data, the decline in population between 2001 and 2006 was primarily in the under 24 demographic.
9. BBM bureau of measurement's data indicate that the incumbent commercial radio stations have accounted for more than 70% of total tuning in the Sydney radio market since Fall 2003. Since 2002, the Sydney commercial radio stations reported higher profit before interest and taxes (PBIT) margins than the average PBIT margins for all commercial radio stations in Canada as well as for all commercial radio stations in Nova Scotia.

10. Taking into account the positive economic indicators for the Sydney radio market and based on the evidence that Sydney radio revenues are healthy, the Commission is satisfied that the market could support the licensing of two new commercial radio stations without an undue negative impact on the Sydney radio market. Furthermore, in the Commission's view, the addition of new local commercial radio stations in Sydney would increase the diversity of programming available to listeners, introduce new editorial voices and foster greater competition in a market that has been served by only one commercial radio licensee for more than 40 years.
11. In Broadcasting Public Notice 2006-159, the Commission set out its concern with the relatively lower profitability of radio markets with populations under 250,000, and signalled its intent to avoid over-licensing in such markets. The Commission is of the view that the licensing of two new commercial radio stations to serve the Sydney market at this time is consistent with the intent of Broadcasting Public Notice 2006-159.

## **Assessment of the applications**

### **Criteria for assessment**

12. Having determined that the Sydney market could support two new commercial radio stations, the Commission considered the applications to serve Sydney in light of all the factors relevant to the evaluation of applications outlined in the Call, which include the factors set out in Decision 99-480.
13. Although the Commission has weighed all of the factors outlined in the Call in assessing the proposed services, it considers that the quality of the applications, especially with respect to the overall business plan (which includes the proposed format) as well as commitments to local programming and to Canadian content development (CCD), were particularly relevant to its determinations in light of the specific circumstances of the Sydney radio market. The availability of frequencies was not an issue for this market.

### **The applications**

*Barry Maxwell Martin, on behalf of a corporation to be incorporated*

14. Barry Maxwell Martin, on behalf of a corporation to be incorporated, (Martin) indicated that the proposed licensee corporation would be controlled by Mr. Martin, a resident of Sydney. Martin submitted that the proposed station would be an integral part of the Sydney community because it would be locally owned and operated.
15. Martin proposed to establish an English-language commercial FM radio station that would operate at 103.5 MHz (channel 278B) with an effective radiated power (ERP) of 26,500 watts. The proposed station would offer a Rock music format targeted to the 25 to 54 demographic with a median age of 40. The station would also broadcast music drawn from subcategory 34 (Jazz and Blues). The applicant made a commitment that at least 35% of Jazz and Blues musical selections broadcast in each broadcast week would be Canadian, which exceeds the minimum requirements set out in the *Radio Regulations, 1986* (the Regulations).

16. In each broadcast week, Martin's proposed station would broadcast a minimum of 123 hours of local programming. It would offer 113 hours of live-to-air programming weekly. Approximately 14 hours 45 minutes of each broadcast week would be devoted to spoken word programming including 4 hours 50 minutes of news, of which 50% would be local content, a one-hour news review program; 3 hours 7 minutes of sports coverage; and 2 hours 9 minutes of local weather forecasts as well as 125 minutes of public service announcements and 94 minutes of local events promotion. The station would also provide a 24-hours news hotline. The applicant indicated that, in addition to the required basic annual contribution to CCD, it would contribute \$11,300 to CCD over seven consecutive broadcast years, upon commencement of operations.

*Newcap Inc.*

17. Newcap Inc. (Newcap) is the licensee of a number of radio stations serving communities across Canada. Newcap's parent company, Newfoundland Capital Corporation Limited, is controlled by Mr. Harry R. Steele.
18. Newcap proposed to establish an English-language commercial FM radio station that would operate at 101.9 MHz (channel 270C) with an average ERP of 57,000 watts. The proposed station would offer a Classic Rock/Mainstream Rock hybrid music format targeted to a core audience of those aged between 25 and 54 years old.
19. In each broadcast week, Newcap's proposed station would broadcast 126 hours of local, live-to-air programming. The station would offer 12 hours 10 minutes of spoken word programming including 5 hours 45 minutes of structured, regularly scheduled newscasts and 2 hours 20 minutes of surveillance material such as weather and traffic conditions. At the hearing, Newcap stated that its goal is to devote 75% of its newscasts to local content. The applicant indicated that, in addition to the required basic annual contribution to CCD, it would contribute \$406,000 to CCD over seven consecutive broadcast years, upon commencement of operations.

*Andrew Newman, on behalf of a corporation to be incorporated*

20. Andrew Newman, on behalf of a corporation to be incorporated, (Newman) indicated that the proposed licensee corporation would be controlled by Coast Broadcasting Ltd. (Coast), the licensee of CKSJ-FM St. John's, Newfoundland and Labrador.
21. Newman proposed to establish an English-language commercial FM radio station that would operate at 93.1 MHz (channel 226B) with an ERP of 50,000 watts. The proposed station would offer an Adult Contemporary/Classic Hits music format designed to appeal to listeners between the ages of 25 and 54 with a particular focus on females aged 30 to 50. In each broadcast week, the station would broadcast 120 hours of local programming.

It would offer 91 hours of live-to-air programming weekly as well as approximately 29 hours of voice-tracked programming. The station would provide 14 hours of spoken word programming weekly, including 4 hours of news. The applicant indicated that, in addition to the required basic annual contribution to CCD, it would contribute \$58,500 to CCD over seven consecutive broadcast years, upon commencement of operations.

*HFX Broadcasting Inc.*

22. HFX Broadcasting Inc. (HFX) is the licensee of CKHZ-FM Halifax, Nova Scotia. HFX's parent company, Evanov Communications Inc., is controlled by Mr. William Evanov.
23. HFX proposed to establish an English-language commercial FM radio station that would operate at 100.9 MHz (channel 265B) with an average ERP of 10,500 watts. The proposed station would offer a Youth Contemporary music format targeted to the 12 to 34 demographic with a core audience of those aged between 12 and 24. The musical selections would be drawn from the urban, hip-hop, R&B, dance, pop, modern rock and alternative rock genres and would be presented in an interactive format rather than adhering to a programming schedule. A minimum of 40% of all musical selections from content category 2 (Popular music) broadcast during the broadcast week and between 6 a.m. and 6 p.m. Monday through Friday would be Canadian selections, which exceeds the minimum requirements set out in the Regulations.
24. In each broadcast week, HFX's proposed station would broadcast a minimum of 110 hours of local programming. At least 100 hours of the broadcast week would consist of live-to-air programming and the remaining 26 hours would be voice-tracked. The station would broadcast 13 hours 51 minutes of spoken word programming weekly including approximately 4 hours 30 minutes of news, of which 40% would be local content, and 8 hours of live announcer talk and surveillance material such as weather and traffic reports. The applicant indicated that, in addition to the required basic annual contribution to CCD, it would contribute \$243,500 to CCD over seven consecutive broadcast years, upon commencement of operations.

### **Commission's analysis**

25. Of the four applications, the Commission considers that only Martin and Newcap presented viable business plans. The Commission is also satisfied that Martin and Newcap each clearly demonstrated the financial capacity necessary to fulfil their respective plans.
26. The Commission recognizes that musical formats are not regulated and may be changed to respond to market realities. Nevertheless, the Commission notes that the Rock music formats proposed by Martin and Newcap are not available in the current Sydney radio market. Both proposed stations would appeal to listeners in the 25 to 54 demographic. In the Commission's view, approval of the applications by Martin and Newcap would bring the greatest level of programming diversity to the market and would have the least impact on the market.

27. Of the rock musical selections offered by Martin's proposed station, 80% would be those released between 1963 and 1990, and 20% those released between 1991 and 2006. Upon launch, the station would offer at least 2,500 to 3,000 musical selections rotated on a 4.5-day to 5.5-day basis. Current musical selections and emerging artists would be rotated on a quicker basis. The station would also offer a two-hour weekly program featuring music drawn from subcategory 34 (Jazz and Blues). The level of Canadian content for Jazz and Blues musical selections would exceed the minimum regulatory requirement and therefore provide enhanced exposure for Canadian music.
28. Of the rock musical selections offered by Newcap's proposed station, 50% would be traditional classic rock, 20% would be current mainstream rock (new releases or selections released six months prior to broadcast) and 30% would be recurrent mainstream rock (selections released between six months and two years prior to broadcast).
29. As noted above, Martin's proposed station would offer 123 hours of local programming in each broadcast week and broadcast approximately 4 hours 30 minutes of spoken word programming that focuses on local issues. The applicant's plans to make a 24-hour news line available would allow Sydney residents to provide local input for broadcast on the station. Furthermore, Martin's proposed station would be locally owned and operated. In the Commission's view, the applicant's close ties to the community should provide greater opportunities for local reflection on its proposed station.
30. The Commission also considers that the station proposed by Newcap would provide significant local reflection. All of the programming would be local and live-to-air. Approximately 4 hours of the spoken word programming aired in each broadcast week would focus on local issues.
31. With respect to the development of Canadian talent, the Commission notes that its *Commercial Radio Policy 2006* announced in Broadcasting Public Notice 2006-158 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.
32. Martin and Newcap each committed to make contributions to CCD in addition to the required basic annual contributions.

33. Martin indicated that, in addition to the required basic annual contributions, it would, commencing in its first year of operation, by condition of licence, allocate \$1,900 in each of years one to three and \$1,400 in each of years four to seven to FACTOR. In addition to its CCD commitments, Martin indicated that it would, as a local talent initiative, contribute \$2,000 annually, or \$14,000 over seven consecutive years, in direct expenditures on a talent contest aimed at discovering and promoting new talent in Cape Breton Island.
34. Newcap indicated that, in addition to the required basic annual contributions, it would, commencing in the first year of operation, by condition of licence, allocate \$58,000 per year in each of the first seven years of operation to CCD. Newcap proposed to direct \$11,600 per year of this over and above amount to FACTOR. The remainder, \$46,400, would be directed to eligible initiatives as follows: support for Canadian Music week, the Cape Breton-Victoria Regional School Board and Membertou First Nations Elementary School.

### **Commission's determinations**

35. Based on all of the foregoing, the Commission determines that the applications by Martin and Newcap best fulfil the criteria set out in the Call for evaluating competing applications for new radio stations to serve Sydney. Accordingly, the Commission **approves** the applications for broadcasting licences to operate new radio stations in Sydney by the two parties listed below:

**Barry Maxwell Martin, on behalf of a corporation to be incorporated**

*Application 2006-0237-7, received 7 March 2006*

**Newcap Inc.**

*Application 2006-1155-0, received 14 September 2006*

36. Terms and **conditions of licence** for the new stations, including conditions requiring each applicant to adhere to its CCD commitments and requiring Martin to adhere to its commitment to broadcast a minimum of 35% Canadian content in its Jazz and Blues musical selections, are set out in Appendices 1 and 2 to this decision.
37. With respect to CCD, the Commission reminds the applicants that any development initiatives that have not been allocated to specific parties by condition of licence must be allocated to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists. Parties and initiatives eligible for CCD funding are identified in paragraph 108 of Broadcasting Public Notice 2006-158.

38. In light of the above, the Commission **denies** the remaining applications for broadcasting licences to operate new radio stations in Sydney, as set out below:

**Andrew Newman, on behalf of a corporation to be incorporated**

*Application 2006-1169-1, received 15 September 2006*

**HFX Broadcasting Inc.**

*Application 2006-1180-8, received 15 September 2006*

### **Employment equity**

39. Because Newcap 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**

- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Revised policy concerning the issuance of calls for radio applications and a new process for applications to serve small markets*, Broadcasting Public Notice CRTC 2006-159, 15 December 2006
- *CHER Sydney – Conversion to FM band*, Broadcasting Decision CRTC 2006-355, 11 August 2006
- *Call for applications for a broadcasting licence to carry on a radio programming undertaking to serve Sydney, Nova Scotia*, Broadcasting Public Notice CRTC 2006-86, 17 July 2006
- *Introductory statement – Licensing new radio stations*, Decision CRTC 99-480, 28 October 1999

*This decision and the appropriate appendix must be attached to each licence. This document 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 1 to Broadcasting Decision CRTC 2007-220**

**Barry Maxwell Martin, on behalf of a corporation to be incorporated**

*Application 2006-0237-7, received 7 March 2006*

### **Terms, conditions of licence, expectation and encouragement**

**Issuance of the broadcasting licence to operate an English-language, commercial FM radio programming undertaking in Sydney, Nova Scotia**

#### **Terms**

The licence will expire 31 August 2013.

The station will operate at 103.5 MHz (channel 278B) with an effective radiated power of 26,500 watts.

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 satisfied the Commission, with supporting documentation, that an eligible Canadian corporation has been incorporated in accordance with the application in all material respects; and
- 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 6 July 2009. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

#### **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, as an exception to the percentage of Canadian musical selections set out in the *Radio Regulations, 1986*, in any broadcast week devote, in that broadcast week, a minimum of 35% of its musical selections from subcategory 34 (Jazz and Blues) to Canadian selections broadcast in their entirety.

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*.

3. The licensee shall, upon commencement of operations, 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 to 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.

4. In addition to the basic annual contribution, commencing in the first year of operations, the licensee shall contribute \$1,900 in additional contributions to FACTOR. This amount shall vary in subsequent years of the licence term in accordance with the terms set out in the application as approved. This amount is over and above the licensee’s required basic annual CCD contribution.

## **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.

## **Appendix 2 to Broadcasting Decision CRTC 2007-220**

### **Newcap Inc.**

*Application 2006-1155-0, received 14 September 2006*

### **Terms, conditions of licence and expectation**

**Issuance of the broadcasting licence to operate an English-language, commercial FM radio programming undertaking in Sydney, Nova Scotia**

#### **Terms**

The licence will expire 31 August 2013.

The station will operate at 101.9 MHz (channel 270C) with an average effective radiated power of 57,000 watts.

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 6 July 2009. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

#### **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, upon commencement of operations, 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 to 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. In addition to the basic annual contribution, the licensee shall, upon commencement of operations, contribute \$58,000 annually to the promotion and development of Canadian content. This amount is over and above the licensee's required basic annual CCD contribution. Of this amount, \$11,600 per year shall be devoted to FACTOR. The remainder, \$46,400, shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives in Public Notice 2006-158.

## **Expectation**

### **Cultural diversity**

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