



## Broadcasting Decision CRTC 2014-115

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Route reference: 2013-448

Ottawa, 14 March 2014

### **Newcap Inc.**

Saint John, New Brunswick

*Applications 2013-0983-1 and 2013-0984-9, received 4 July 2013*

*Public hearing in the National Capital Region*

*5 November 2013*

### **CHNI-FM Saint John – Acquisition of assets, licence amendments and technical changes**

*The Commission **approves** an application by Newcap Inc. (Newcap) for authority to acquire from Rogers Broadcasting Limited the assets of the English-language specialty commercial radio station CHNI-FM Saint John and for a new broadcasting licence to continue the operation of the station.*

*The Commission also **approves** the applicant's request to delete conditions of licence relating to the station's programming. This will allow CHNI-FM to move from a News/Talk to a music format.*

*Finally, the Commission **approves** an application by Newcap to change the authorized contours of CHNI-FM.*

### **The applications**

1. Newcap Inc. (Newcap) filed an application (2013-0983-1) for authority to acquire from Rogers Broadcasting Limited (Rogers) the assets of the English-language specialty commercial radio station CHNI-FM Saint John and for a new broadcasting licence to continue the operation of the station.
2. In that application, Newcap also requested the deletion of conditions of licence relating to the programming broadcast on CHNI-FM, as discussed below. It submitted that CHNI-FM's current News/Talk format is not economically viable and that the requested amendments would allow it to operate the station under a more profitable, mainstream Adult Contemporary music format.
3. Newcap is a corporation controlled by Mr. Harold R. Steele. Following the proposed transaction, Newcap would become the licensee of CHNI-FM.

4. The purchase price for the transaction, pursuant to the terms of the Asset Purchase Agreement, is \$750,000. Citing CHNI-FM's financial difficulties, Newcap stated that it should not be required to pay tangible benefits on this transaction as would otherwise be required under the Commission's 2006 Commercial Radio Policy (see Broadcasting Public Notice 2006-158). However, since it has requested a change to the station's programming format, Newcap proposed to make a contribution to Canadian content development (CCD) that is over and above that required pursuant to section 15 of the *Radio Regulations, 1986* (the Regulations). Specifically, it committed to contribute, by condition of licence, a total of \$45,003 to CCD over seven consecutive broadcast years upon commencement of operations (\$6,429 per broadcast year), with 20% to be allocated to FACTOR or MUSICACTION and the remainder to be directed to initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of the 2006 Commercial Radio Policy. The Commission notes that this would amount to the equivalent of the tangible benefits that Newcap would have otherwise paid.
5. Newcap also filed an application (2013-0984-9) to change the authorized contours of CHNI-FM by decreasing the average effective radiated power (ERP) from 79,000 to 12,200 watts (maximum ERP from 79,000 to 25,000 watts), by increasing the effective height of antenna above average terrain (EHAAT) from 395 to 414 metres, and by changing the antenna radiation pattern from non-directional to directional. It indicated that these technical changes would eliminate the existing spill from CHNI-FM into the out-of-market Oromocto, New Brunswick area and would remove the signal overlap with its stations licensed to serve Fredericton, New Brunswick.
6. Newcap indicated that the two applications are non-severable and requested that they therefore be considered jointly.

## **Interventions**

7. The Commission received interventions in opposition to the asset acquisition/licence amendment application from Maritime Broadcasting System Limited (MBS) and an individual. Newcap replied to the intervention from MBS. The Commission did not receive any interventions in regard to the application for technical changes. The public record for these applications is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

## **Issues**

8. After examining the public record for these applications in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
  - the application of the tangible benefits policy;
  - the deletion of conditions of licence relating to CHNI-FM's programming;

- the length of the term for the new broadcasting licence; and
- the appropriateness of the requested technical changes.

#### **Application of the tangible benefits policy**

9. In the 2006 Commercial Radio Policy, the Commission set out its tangible benefits policy in regard to transactions involving radio stations. In that policy, the Commission considered it appropriate to require a financial contribution of 6% of the value of a transaction to the development of Canadian content. However, the Commission does not generally require tangible benefits for commercial radio stations that are unprofitable. Radio stations are considered to be unprofitable if their profit before interest and tax (PBIT) averaged over three years preceding the filing of the application to purchase is negative.
10. The Commission notes that CHNI-FM has been operating at a loss since its launch in 2006. It therefore considers that Newcap should be exempted from the requirement to provide tangible benefits for the present transaction. The Commission further notes, however, the applicant's proposal to contribute to CCD an amount that is equal to the tangible benefits it would have paid, and considers this proposal appropriate. A **condition of licence** to that effect is set out in the appendix to this decision.

#### **Deletion of conditions of licence relating to CHNI-FM's programming**

11. Newcap requested the deletion of the following conditions of licence<sup>1</sup> relating to CHNI-FM's programming:
  - The licensee shall operate the station within the Specialty format as defined in *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995, as amended in *Revised content categories and subcategories for radio*, Public Notice CRTC 2000-14, 28 January 2000, as amended from time to time.
  - The licensee shall ensure that more than 50% of all programming broadcast during each broadcast week consists of material from content Category 1 – Spoken Word.
  - The licensee shall ensure that at least 50% of all programming broadcast during each broadcast week consists of local programming. The definition of local programming shall be as set out in *Policies for local programming on commercial radio stations and advertising on campus stations*, Public Notice CRTC 1993-38, 19 April 1993, as amended from time to time.
  - The licensee shall ensure that no more than 25% of all programming broadcast during each broadcast week consists of musical selections.

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<sup>1</sup> These conditions of licence are set out in Broadcasting Decisions 2004-520 and 2010-465.

- The licensee shall ensure that musical selections are broadcast only during the 6 p.m. to midnight period over the course of the broadcast week.
12. In assessing Newcap's request, the Commission has focused on issues relating to the economic need for the change in the station's format, the impact of the proposed amendments on incumbent stations, the diversity of voices and musical diversity, and the integrity of its licensing process. In light of these factors, as discussed below, the Commission considers it appropriate to approve the request to delete the above-noted conditions of licence.

***Economic need for the change in programming format***

13. The Commission notes that Rogers, the current licensee of CHNI-FM, has extensive experience in operating radio services in the News/Talk format. Nevertheless, since the launch of CHNI-FM in 2006, it has reported recurring losses for the station. Furthermore, although the Commission, in Broadcasting Decision 2010-465, approved an increase from 10% to 25% in the amount of music that could be broadcast on CHNI-FM, the station's financial situation has shown no signs of improvement. The Commission therefore finds that there is a demonstrated economic need for the proposed change to CHNI-FM's programming format and considers that the proposed licence amendments could help the station, under Newcap, to be successful in the future.

***Potential impact on incumbent radio stations***

14. In its intervention, MBS submitted that the financial forecasts provided by Newcap show that the Saint John radio market cannot support another music-based FM radio station. It noted that the city has the highest unemployment rate of any urban centre in Canada and argued that the radio market is not growing. In reply, Newcap stated that in the past, it successfully entered into radio markets that did not appear to be growing. It further stated that its success was due to providing strong local service, well-trained programming and sales staff, and the best technical signal possible. Finally, Newcap noted that part of its proposed business model is that it can operate CHNI-FM less expensively under a music format.
15. The Commission notes that Saint John is currently served by 13 radio stations, six of which are English-language commercial stations owned by three different operators (Acadia Broadcasting Ltd. (Acadia), MBS and Rogers). It further notes that total advertising in the Saint John radio market declined between 2008 and 2012. In the Commission's view, the general trend in advertising growth in the last five years suggests that the market may be near its limit in terms of capacity to support additional radio services. Accordingly, it considers that any additional revenue that CHNI-FM would garner should the requested licence amendments be approved would come, at least in part, from incumbent stations operating in the market.

16. However, the Commission is also of the view that a number of factors could mitigate the potential impact on incumbent stations. Acadia and MBS are two well-established, well-capitalized radio station operators. The healthy overall financial results that they post could help them to sustain the competition that an additional mainstream radio station would introduce into the market. Furthermore, both Acadia and MBS operate multiple radio stations in Saint John, which could allow for synergies that would not be available to Newcap as a single-station operator in the market. Finally, given that CHNI-FM, under Rogers, already draws advertising revenues from the Saint John radio market, any additional revenue Newcap may draw would be incremental to the station's current business. Consequently, the Commission finds that approval of the proposed licence amendments would not have an undue negative impact on incumbent stations in the market.

***Impact on diversity of voices and musical diversity***

17. In its intervention, MBS submitted that approval of the proposed licence amendments would decrease the diversity in the marketplace. In reply, Newcap submitted that the diversity of voices in the Saint John radio market would not be reduced. Noting that the market currently has three commercial operators, including Rogers, it argued that should the present application be approved, the number of editorial voices would remain the same.

18. Although approval of the requested licence amendments would reduce the overall level of news provided in the Saint John radio market, the entry of Newcap as a new player in that market would maintain a distinct radio voice in Saint John. Furthermore, the proposed licence amendments would result in the introduction in Saint John of an Adult Contemporary music format appealing to listeners between 25 and 54 years of age, thereby contributing to the musical diversity in that radio market. Accordingly, the Commission finds that approval of the proposed licence amendments would not have a negative impact on either the diversity of news voices or musical diversity in Saint John.

***Integrity of the licensing process***

19. In its intervention, MBS submitted that approval of the proposed format change would permit Newcap to enter the mainstream commercial radio market in Saint John without going through a competitive licensing process. Newcap replied that while the News/Talk format may be a specialty format, it is also a mainstream format. It also noted the difficulties associated with entering the Saint John market as a new entrant and as a stand-alone operator, given the presence of two multiple-station operators.

20. The Commission generally expects licensees of radio stations that were granted licences through a competitive process to maintain their original conditions of licence for at least the first licence term. As the first licence term for CHNI-FM ended in 2013, and given that the station has operated under the same specialty News/Talk format over that licence term, the Commission finds that its consideration and

approval of the licence amendments requested by Newcap would not undermine the integrity of its licensing process.

#### **Length of term for the new broadcasting licence**

21. As noted above, Newcap requested the issuance of a new broadcasting licence to continue the operation of the station. Given that CHNI-FM has been in compliance with its regulatory requirements and conditions of licence, the Commission considers that it would be appropriate to issue a new licence for a full seven-year term for the station.<sup>2</sup>

#### **Requested technical changes**

22. In examining the application to change the authorized contours of CHNI-FM, the Commission has focused on whether approval of the proposed technical changes would be consistent with its Common Ownership Policy for radio (see Public Notice 1998-41). That policy sets out many objectives, including preserving the availability of distinct news voices in a community and ensuring true competition and format diversity. Restricting the ownership of stations in a given market continues to be one of the Commission's most effective tools to ensure that a diversity of voices exists in a community.
23. The Common Ownership Policy establishes that in markets with fewer than eight commercial stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations in any one frequency band. In markets with eight or more commercial stations operating in a given language, a person may be permitted to own or control as many as two AM and two FM stations in that language. The Commission maintained this approach in its 2006 Commercial Radio Policy, as well as in its policy on diversity of voices (Broadcasting Public Notice 2008-4), as clarified in Broadcasting Information Bulletin 2010-341.
24. When it established the guidelines for the application of the Common Ownership Policy for radio in Broadcasting Information Bulletin 2010-341, the Commission set out the following criteria for determining the number of commonly owned stations within a market:
  - Where the population in the overlapping area constitutes 15% or more of the population of the market, the existing station will be included when assessing the number of stations operating in a particular language in that market.

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<sup>2</sup> In this regard, the Commission notes that the current licence expires 31 August 2014. The original expiry date for the licence was 31 August 2013 and was administratively renewed for one year in Broadcasting Decision 2013-304.

- Where the population in the overlapping area comprises 5% or more, but less than 15% of the market, the Commission will give consideration to the following factors:
    - whether the station in question accepts advertising from local businesses in that market, and
    - whether that station broadcasts news and public affairs coverage of particular interest to listeners in that market.
25. The primary service contour of CHNI-FM currently has a population overlap of 14% with the primary service contour of Newcap's station CFRK-FM Fredericton, and of 6% with the primary service contour of its station CIHI-FM Fredericton. Although the overlap in each case is below 15%, it is quite close to that threshold in the case of CFRK-FM. As such, CFRK-FM could be considered as serving the same market as CHNI-FM.
26. However, implementation of the proposed technical changes would result in these overlaps being eliminated such that CHNI-FM would be serving a different radio market than that served by both CFRK-FM and CIHI-FM. Consequently, Newcap would own and operate two English-language FM stations in Fredericton, and one in Saint John. Accordingly, the Commission finds that approval of the proposed technical changes for CHNI-FM ensures compliance with its Common Ownership Policy for radio.

## Conclusion

27. In light of all the above, the Commission **approves** the application by Newcap Inc. for authority to acquire from Rogers Broadcasting Limited the assets of the English-language specialty commercial radio programming undertaking CHNI-FM Saint John and for a new broadcasting licence to continue the operation of the undertaking.
28. The Commission also **approves** the request to amend the broadcasting licence for CHNI-FM in order to delete the above-noted conditions of licence relating to programming.
29. Finally, the Commission **approves** the application by Newcap to change the authorized contours of CHNI-FM by decreasing the average ERP from 79,000 to 12,200 watts (maximum ERP from 79,000 to 25,000 watts), by increasing the EHAAT from 395 to 414 metres, and by changing the antenna radiation pattern from non-directional to directional.
30. Upon surrender of the current licence issued to Rogers, the Commission will issue a new broadcasting licence to Newcap. The licence will expire 31 August 2020. The terms and **conditions of licence** for the station are set out in the appendix to this decision.

31. The Commission reminds the licensee that, pursuant to section 22(1) of the *Broadcasting Act*, this authority will only be effective when the Department of Industry notifies the Commission that its technical requirements have been met and that a broadcasting certificate will be issued.

### **Employment equity**

32. Because this licensee is subject to the *Employment Equity Act* and files reports concerning employment equity with the Department of Employment and Social Development, its employment equity practices are not examined by the Commission.

Secretary General

### **Related documents**

- *CKNI-FM Moncton and CHNI-FM Saint John – Administrative renewals*, Broadcasting Decision CRTC 2013-304, 21 June 2013
- *CKNI-FM Moncton and CHNI-FM Saint John – Licence amendments*, Broadcasting Decision CRTC 2010-465, 9 July 2010
- *Revised guidelines for the application of the Common Ownership Policy for Radio*, Broadcasting Information Bulletin CRTC 2010-341, 4 June 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
- *News/Talk commercial FM radio station in Saint John*, Broadcasting Decision CRTC 2004-520, 26 November 2004
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998

## **Appendix to Broadcasting Decision CRTC 2014-115**

### **Terms, conditions of licence and expectation for the English-language commercial FM radio programming undertaking CHNI-FM Saint John, New Brunswick**

#### **Terms**

The licence will expire 31 August 2020.

#### **Conditions of licence**

1. The licensee shall adhere to the standard conditions of licence set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.
2. In addition to the basic annual contribution to Canadian content development set out in section 15 of the *Radio Regulations, 1986*, the licensee shall, upon commencement of operations, make an annual contribution of \$6,429 (\$45,003 over seven broadcast years) to the promotion and development of Canadian content. Of this amount, not less than 20% per broadcast year shall be devoted to FACTOR or MUSICACTION. The remainder 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.

#### **Expectation**

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