



## Broadcasting Decision CRTC 2014-38

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Route reference: Part 1 application posted on 9 August 2013

Ottawa, 4 February 2014

### **Newfoundland Broadcasting Company Limited**

St. John's, Newfoundland and Labrador

*Application 2013-1118-3*

### **Eligibility of CJON-DT St. John's for the Small Market Local Production Fund**

*The Commission **approves** an application for CJON-DT St. John's to be recognized as a small-market independently owned television station eligible for support from the Small Market Local Production Fund.*

#### **The application**

1. The Commission received an application by Newfoundland Broadcasting Company Limited requesting that CJON-DT St. John's, Newfoundland and Labrador, be recognized as a small-market independently owned television station eligible for support from the Small Market Local Production Fund (the SMLPF) established pursuant to Broadcasting Public Notices 2003-37 and 2003-38.
2. The applicant stated that CJON-DT met the following eligibility criteria identified in the above notices:
  - the station must be independently owned (i.e. not owned by one of the larger ownership groups identified in Broadcasting Public Notice 2003-37);
  - the station must be available over the air;
  - the station must provide local programming; and
  - the station must serve a market with a population of fewer than 300,000 people.
3. With respect to the final criterion, the applicant noted that CJON-DT had originally been unable to receive funding from the SMLPF because of the additional population served by its analog rebroadcasting transmitters. The applicant stated that it shut down the rebroadcasting transmitters in July 2013 and CJON-DT is now available over the air only through its digital transmitter in St. John's. As a result, the applicant

stated that the population served by the station's over-the-air signal is fewer than 300,000.

4. The applicant further submitted that audience fragmentation is a growing concern for CJON-DT due to the expanded channel line-ups offered by most broadcasting distribution undertakings (BDUs), and especially strong penetration of direct-to-home (DTH) services. The applicant further stated that CJON-DT had previously been distributed outside Newfoundland and Labrador by BDUs. However, according to the applicant, many BDUs, especially those controlled by larger groups, have removed CJON-DT from their line ups.
5. The applicant also submitted that, due to the time zone in which CJON-DT operates, it cannot purchase rights to certain new programming at an appropriate time for its market since this would constitute a pre-release in North America. As well, CJON-DT's reach has decreased, and national advertisers are reducing their purchases as a result.
6. The applicant also indicated that local programming is expensive and obligations with respect to closed captioning and described video place additional strain on tight budgets. The applicant was also concerned that the phase-out of the local programming improvement fund would hinder CJON-DT's ability to provide local programming. In light of the above, the applicant considered that it required the assistance of the SMLPF.

### **Intervention and the applicant's reply**

7. The Commission received an intervention opposing the application by The Coalition of Small Market Independent Television Stations (the Coalition). The Coalition represents stations that currently receive funding from the SMLPF. The Coalition also filed a letter requesting an opportunity to respond to additional information provided by the applicant in its reply to interventions. The Commission granted this request and the response has been placed on the public file. 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." The material below summarizes the positions of the Coalition as set out in its intervention and its response to the additional information filed by the applicant as discussed above, and the applicant in reply to the Coalition.
8. The Coalition contended that CJON-DT actually serves a much larger market than St. John's because there is no over-the-air service by any broadcaster in the markets CJON-DT once served with rebroadcasting transmitters. Viewers in these markets are still able to receive CJON-DT, but they must do it by way of DTH and other BDUs. The Coalition further submitted that markets are not defined strictly by the contours of the station in question for the purposes of the SMLPF and to do so would mark a change in policy. As such, the Coalition considered that the market size for CJON-DT has effectively remained unaltered and that viewers outside St. John's should be included in the calculation of CJON-DT's market. Moreover, the Coalition argued that CJON-DT is distributed outside of Newfoundland and Labrador due to its

“superstation” business strategy and that its market size should reflect that distribution. The Coalition also argued that a station should not become eligible to receive funding from the SMLPF by reducing its over-the-air coverage.

9. The Coalition further submitted that the SMLPF was originally set up specifically to offset revenue loss caused by distant signals. It was not meant to address all of the competitive issues faced by small market television stations. The Coalition considered that the financial issues raised by the applicant are actually related to CJON-DT’s business strategy and not to the underlying rationale for the creation of the SMLPF.
10. The applicant argued that CJON-DT’s market should be defined either by the number of people within the station’s Grade B contour or by the St. John’s Central Market Area (CMA). It notes that CJON-DT’s Grade B contour serves 232,000 people while the St. John’s CMA includes 197,000 people. It argued that coverage by BDUs should not be used to calculate the market size.
11. The applicant also argued that its ratings have declined over time due in large part to audience fragmentation and that a great deal of the programming that it currently broadcasts is already available from other stations receivable in the St. John’s market. The applicant was further of the view that the basic purpose of the SMLPF is to enable smaller independent stations to produce their own local programming. It argued that its decision to shut down its analog transmitters – which it had maintained for many years despite a diminished audience – was intended, to a large extent, to allow it to spend more money on programming improvements so it could better serve the majority of its viewers. The applicant also noted that there was a significant short-term cost to decommissioning its transmitter sites.

### **Commission’s analysis and decisions**

12. CJON-DT clearly meets three of the four criteria to qualify as a small-market independently owned television station eligible for support from the SMLPF. It is independently owned, available over-the-air, and provides local programming. The fourth criterion, that the station must serve a market with a population of fewer than 300,000 people, requires a more extensive analysis.
13. In Broadcasting Public Notice 2003-37, the Commission did not set out a strict definition of the term “market” for the purpose of determining eligibility to receive funding from the SMLPF. A market may be determined by various measures depending on the issue at hand and the policy being applied. A variety of views as to how the market in question should be defined were suggested by the applicant and intervener in the present proceeding. The Commission is of the view that, in this case, using the population of the CMA served by the station, i.e. 197,000 people, is the most appropriate measure and is consistent with the approach taken by the Commission for CHEK-DT in Broadcasting Decision 2013-739. The Commission is therefore satisfied that CJON-DT meets the criterion related to market size.
14. While the Coalition argued that coverage by DTH and cable distributors should be considered, the Commission notes that many of the stations that currently receive

funding from the SMLPF also receive DTH or cable carriage beyond their home markets.

15. In light of all of the above, the Commission **approves** the application by Newfoundland Broadcasting Company Limited requesting that CJON-DT St. John's, Newfoundland and Labrador, be recognized as a small-market independently owned television station eligible for support from the Small Market Local Production Fund.

Secretary General

**Related documents**

- *Eligibility of CHEK-DT Victoria for the Small Market Local Production Fund*, Broadcasting Decision CRTC 2013-739, 20 December 2013
- *Contributions to Canadian programming by broadcasting distribution undertakings*, Broadcasting Public Notice CRTC 2003-38, 16 July 2003
- *Direct-to-home (DTH) broadcasting distribution undertakings – simultaneous and non-simultaneous program deletion and the carriage of local television signals in smaller markets*, Broadcasting Public Notice CRTC 2003-37, 16 July 2003

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