



Broadcasting Decision CRTC 2005-241

Ottawa, 10 June 2005

Northwest Broadcasting Inc.
Thunder Bay and Pigeon River, Ontario

Application 2004-0661-2
Broadcasting Public Notice CRTC 2004-70
16 September 2004

Transfer of effective control of Northwest Broadcasting Inc. to H.F. Dougall Company, Limited

*The Commission **denies** the application by Northwest Broadcasting Inc. to transfer the effective control of Northwest Broadcasting Inc. to H.F. Dougall Company, Limited.*

Background

1. The Commission received an application by Northwest Broadcasting Inc. (Northwest) for authority to transfer the effective control of Northwest to H.F. Dougall Company, Limited (H.F. Dougall). The transaction would be implemented through the transfer of all of Northwest's issued and outstanding shares to H.F. Dougall.
2. Northwest, a corporation owned and controlled by Mr. Ari Lahdekorpi, is the licensee of the low-power radio station CFQK-FM Kaministiquia and its transmitter CKED-FM Shuniah Township, in Ontario. Northwest also owns and controls 1333598 Ontario Limited, the licensee of two low-power tourist information radio stations, CIPR-FM Pigeon River and CITB-FM Thunder Bay, Ontario.
3. H.F. Dougall controls two commercial radio stations, CJSD-FM and CKPR Thunder Bay, and two conventional television stations, CKPR-TV and CHFD-TV Thunder Bay, through its subsidiaries, C.J.S.D. Incorporated (C.J.S.D.) and Thunder Bay Electronics Limited. H.F. Dougall also owns a weekly newspaper, *TB Source*.
4. Northwest is currently operating under the terms of an unauthorized local sales agreement (LSA) with C.J.S.D. Under the LSA, C.J.S.D. has been appointed as the sales representative of CFQK-FM. Its role consists of securing sales through local and national sales arrangements and securing local, regional and national radio advertising contracts for the station.
5. Newcap Inc. (Newcap) is the licensee of CKTG-FM Thunder Bay (formerly CJLB-FM). This station was managed by C.J.S.D. under a local management agreement (LMA).

Interventions

6. The Commission received interventions in support and in opposition to this application, as well as several comments.
7. Mr. Rick Ongaro argued that this application is H.F. Dougall's latest attempt to "further [its] monopoly of the airwaves in the Thunder Bay area." He also suggested that, if the application were approved, the Commission should impose, as a condition of the sale, that CFQK-FM maintain a separate and distinctive voice within the community with respect to news, on-air talent, programming and the sales team.
8. In his comment, Mr. Peter Lysak submitted that, with respect to programming, the Thunder Bay population is not currently well served by H.F. Dougall. He suggested that the Commission request that H.F. Dougall re-instate some of the local programs it has deleted from its local radio and conventional television stations.
9. A group of students from Carleton University argued that, if this application were approved, the extensive media ownership by H.F. Dougall would result in less meaningful competition and would therefore not benefit the population of Thunder Bay. The students stated that they would support the application under three conditions:
 - the Commission not grant approval for the transfer of effective control of CITB-FM in order to ensure that the population of Thunder Bay has adequate choice in their market;
 - H.F. Dougall terminate its LMA with Newcap in order to ensure diversity of voices and a healthy competitive market; and
 - 10% of the value of the transaction be invested in Canadian talent development initiatives.
10. Ms. Shari Pinner stated that, if H.F. Dougall intended to change the format of CFQK-FM, she would oppose the application.

Applicant's replies

11. The applicant stated that it would not provide further comments in response to the intervention submitted by Mr. Ongaro, given that Mr. Ongaro is a family member of an employee at Newcap's CJLB-FM.
12. In response to Mr. Lysak's comment, the applicant noted that its application concerned only radio stations and not television stations.
13. The applicant noted the comments provided by the group of students from Carleton University and did not respond to Ms. Pinner's comment.

Commission's analysis and determination

Concentration of ownership and cross-media ownership

14. With respect to the interveners' concern that the approval of this application would strengthen H.F. Dougall's radio market share in Thunder Bay, the Commission is of the view that, given that CITB-FM and CIPR-FM are low-power tourist information services with a specific mandate, the proposed change in their ownership would not affect the level of diversity of programming nor the level of diversity of editorial voices. The Commission is further of the view that these stations have only a limited impact on advertising in the Thunder Bay market, given that, by condition of licence, they may broadcast no more than six minutes per hour of commercial messages.
15. Furthermore, the Commission considers that CFQK-FM, as a low-power station, would have a limited impact on the Thunder Bay market with respect to advertising and audience share. CFQK-FM's transmitter CKED-FM is receivable over only a small portion of northeast Thunder Bay. The Commission is satisfied that the portion of the audience and the revenue that the station takes from the Thunder Bay market is insignificant.
16. In *CKPR and CJSD-FM Thunder Bay – Licence renewals*, Broadcasting Decision CRTC 2005-21, 31 January 2005, the Commission raised the issues of concentration of ownership and diversity of voices that arise in Thunder Bay as a consequence of H.F. Dougall's effective ownership and control of two commercial radio stations and of two television stations serving that market. As a result of this process, the Commission accepted C.J.S.D. and Newcap's proposal to terminate the Thunder Bay LMA by no later than 31 May 2005.
17. In light of the above, the Commission considers that the ownership by H.F. Dougall of the low-power stations involved would not have a significant undue impact on incumbent radio programming undertakings in the Thunder Bay market.

Non-compliance

18. As part of the current application process, the Commission received a copy of a report prepared by the Department of Industry (the Department) in relation to a complaint filed by Big Pond Communications 2000 Inc. (Big Pond), the licensee of the low-power radio station CJUK-FM Thunder Bay. In its complaint, Big Pond alleged that CKED-FM, which is owned by Northwest, was operating at a much higher effective radiated power (ERP) than the 10 watts for which the licensee is authorized.

19. After investigating the allegations, the Department noted in its report that, in fact, CKED-FM had been operating well above its authorized ERP on a number of occasions during the period from 25 November 2004 to 4 January 2005. During the monitoring period, the Department noted other anomalies related to the operation of the transmitter CKED-FM. For example, Northwest's management was not aware of the increase in the ERP. Further, given that only H.F. Dougall's engineering staff had a key to access the station's transmitter site, it was responsible for making technical decisions such as the conducting of tests of the station's transmitter power. Based on its observations and its dealings with the parties, the Department concluded that, "although the legal owner remains Northwest ... it has been clearly demonstrated that the Dougall entities have had and remain in technical control of the station and that no changes could be made without their direct involvement."
20. In their comments to the Commission concerning the Department's findings, Northwest and H.F. Dougall argued that the effective control of CFQK-FM and CKED-FM remains with Mr. Lahdekorpi. They stated, however, that Northwest did not authorize or consent to the tests conducted by H.F. Dougall in which CKED-FM operated at an increased ERP on two occasions. They also added that H.F. Dougall was able to conduct such tests because it has access to the transmitter and the related equipment. Among the reasons given to support its experiments, H.F. Dougall explained that the power was turned up for a short period in both cases to observe coverage in order to know what power increase Northwest could apply for in the future.
21. The Commission has considered the elements noted above and the current business relationship between Northwest and H.F. Dougall under the LSA. Although both parties argued that effective control of the CKED-FM transmitter remains with Mr. Lahdekorpi, the Commission considers that H.F. Dougall has shown, by increasing CKED-FM's ERP without the licensee's knowledge, that it can cause Northwest to undertake a significant course of action regarding a fundamental operation of a broadcasting undertaking without Mr. Lahdekorpi's authority. Consequently, the Commission finds that the licensee is not in a position to ensure that its broadcasting undertaking, the transmitter CKED-FM, operates in compliance with its authorized technical parameters at all times. Furthermore, the Commission is of the view that the business relationship between Northwest and H.F. Dougall exceeds the purpose of the unauthorized LSA, which is to combine the sales function. Given that H.F. Dougall has the technical expertise, its relationship with Northwest expands to the control of technical decisions and access to the facilities. The Commission is therefore not satisfied that the effective control has remained with Mr. Lahdekorpi at all times.

Conclusion

22. Based on the foregoing, the Commission **denies** the application by Northwest Broadcasting Inc. for authority to transfer the effective control of Northwest to H.F. Dougall Company, Limited. The Commission also determines that the LSA in effect between the parties must be terminated no later than 9 September 2005. Further, the Commission reminds the licensee that CFQK-FM and its transmitter CKED-FM must operate in full compliance with their authorized technical parameters at all times.

Secretary General

This decision 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>