



Broadcasting Decision CRTC 2005-554

Ottawa, 24 November 2005

Newcap Inc., on behalf of CKVN Radiolink System Inc.
Winnipeg, Manitoba

Application 2005-0166-0
Broadcasting Public Notice CRTC 2005-58
10 June 2005

Transfer of effective control

*The Commission **approves** an application for authority to transfer the effective control of CKVN Radiolink System Inc., the licensee of CHNR-FM Winnipeg, to Newcap Inc.*

The application

1. The Commission received an application by Newcap Inc. (Newcap), on behalf of CKVN Radiolink System Inc. (Radiolink), for authority to transfer the effective control of Radiolink to Newcap.

Parties to the transaction

2. Newcap is a wholly owned subsidiary of Newfoundland Capital Corporation Limited, which is ultimately controlled by Mr. Harold R. Steele. It owns radio stations in Alberta, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador.
3. Radiolink is a corporation owned by a number of shareholders and controlled by its board of directors for which Mr. James Lee Smith, President and Chief Executive Officer of Radiolink, has been appointed as sole Director by the shareholders. Radiolink is the licensee of CHNR-FM Winnipeg. Radiolink indicated that it has experienced substantial financial losses during CHNR-FM's first two years of operation and that, as a small independent operator, it does not have the financial resources to maintain the station in a radio market that is already served by large broadcasters.

CHNR-FM Winnipeg

4. CHNR-FM, a commercial radio station that is licensed to operate in a specialty format, offers a nostalgia music format comprised of adult standards and easy listening music targeted to older listeners. The Commission originally authorized the operation of CHNR-FM in *Application for a nostalgia radio station to serve Winnipeg*, Broadcasting Decision CRTC 2002-225, 8 August 2002 (Decision 2002-225), following a competitive process. In approving Radiolink's application, the Commission concluded that the proposed station would add programming diversity to the Winnipeg market, and would

not have an undue negative impact on incumbent commercial radio stations. The Commission imposed, as conditions of licence, the applicant's commitments that the station be operated within the specialty format¹, and that no more than 60% of all musical selections broadcast in each broadcast week be selections drawn from category 2 (Popular music). Accordingly, the remainder of the music broadcast by the station must be drawn from category 3 (Special interest music).

The proposed transaction

5. The proposed transaction would be implemented through the transfer of all of the shares of Radiolink to Newcap. Under a Share Purchase Agreement between Radiolink and Newcap, Radiolink's shareholders have, as a first step, transferred a portion of their shares (19.9%) to Newcap, effective 1 February 2005. Further, Radiolink entered into a Management Agreement with Newcap providing for general management services pending the transfer of the remaining 80.1% voting interest. Based on the Share Purchase Agreement, the purchase price for the shares would be \$1,790,000. As a result of this transaction, Newcap would own and control Radiolink.
6. Newcap confirmed that it would fulfill all of the terms and conditions attached to CHNR-FM's current licence, including the commitment made by Radiolink in its application for a broadcasting licence to devote \$77,000 in direct expenditures over the licence term to support the development of Canadian talent. In Decision 2002-225, the Commission imposed Radiolink's commitment to Canadian talent development as a condition of licence.
7. As tangible benefits of the proposed transaction, Newcap made a commitment to devote \$108,241 in direct expenditures over seven years to Canadian talent development, over and above CHNR-FM's current required expenditures in this regard. Newcap specified that it would make annual expenditures of \$15,463 over seven years, as follows:
 - \$7,720 to the Foundation to Assist Canadian Talent on Record (FACTOR)
 - \$5,143 to the Radio StarMaker Fund; and
 - \$2,600 to the University of Manitoba's Faculty of Music to provide scholarships to Winnipeg music students.
8. Newcap noted that, in accordance with the benefits requirements set out in *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998 (the Commercial Radio Policy), the proposed tangible benefits represent 6% of the value of the transaction.
9. Based on its financial projections, Newcap expected that CHNR-FM would achieve a positive profit before interest and taxes in the fifth year of operation under the applicant's control.

¹ The specialty format is 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.

Interventions

10. The Commission received interventions in support of this application and an opposing intervention, which was filed jointly by Rogers Broadcasting Limited (Rogers), CHUM Limited (CHUM) and Corus Entertainment Inc. (Corus). In addition, a former employee of Radiolink filed a comment regarding his legal dispute with Radiolink, an issue that is not within the Commission's jurisdiction.
11. All three opposing interveners own and operate mainstream commercial radio stations in Winnipeg. They claimed that CHNR-FM is no longer operating in the specialty format. According to these interveners, CHNR-FM has abandoned its commitment to nostalgia music and older listeners and is currently operating in an adult contemporary format, making it competitive with the mainstream radio stations in the market. The interveners alleged that an analysis of the programming broadcast by CHNR-FM during the week of 12 to 18 April 2005, which was commissioned by Rogers, revealed that the station was not operating in compliance during that period with its condition of licence requiring that no more than 60% of the musical selections aired during the broadcast week be drawn from category 2. The interveners further claimed that CHNR-FM was not operating in compliance with the levels of Canadian content required by the *Radio Regulations, 1986* for category 2 music and for category 3 music and by condition of licence for category 2 music composed before 1956². However, the interveners acknowledged that they were unable to identify 30% of the music broadcast during the week in question.
12. The opposing interveners proposed that approval of the application be subject to a condition of licence requiring that no more than 60% of musical selections broadcast between 6:00 a.m. and 6:00 p.m., Monday to Friday, be drawn from category 2, with the effect that at least 40% of the musical selections aired during those periods would be drawn from category 3.

Applicant's reply

13. In response to the opposing intervention, Newcap acknowledged that, in reaction to less-than expected revenues, CHNR-FM had adjusted its format slightly by reducing the amount of musical selections originating in the 1930s and 1940s. Nevertheless, Newcap maintained that CHNR-FM is not operating in a mainstream adult contemporary format, and that the station continues to offer the diverse programming that it was licensed to provide. Newcap affirmed that at least 40% of the music aired by CHNR-FM in each broadcast week is drawn from category 3 and includes concert, jazz, folk and non-classic religious musical selections, and that the station's programming is targeted to an audience composed primarily of those aged 45 years and over.

² Except as otherwise provided by a licensee's condition of licence, the *Radio Regulations, 1986* require a commercial radio station to devote at least 35% of its weekly musical selections from category 2, and at least 10% of its weekly musical selections from category 3 to Canadian selections broadcast in their entirety. By condition of licence, CHNR-FM's minimum weekly Canadian content requirements for category 2 music is 2% during periods of category 2 music consisting exclusively of music composed before 1956, and 10% during periods of category 2 music consisting of 90% or more of music composed before 1956.

14. With regard to the opposing interveners' allegation that CHNR-FM did not operate in compliance with its conditions of licence during the week of 12 to 18 April 2005, Newcap noted that the analysis filed by the opposing interveners indicated that 30% of the music aired during that period was unidentifiable. Accordingly, Newcap suggested that the analysis had been conducted by individuals who were not qualified to make appropriate determinations on the music broadcast. Newcap stated that it reviewed the programming broadcast during the week in question, and affirmed that CHNR-FM was operating in compliance with its regulatory obligations during that period. Newcap further indicated that all of the programming aired by CHNR-FM in each week between 19 April 2005 and 17 July 2005 has been analyzed, and that the station's programming is currently monitored on both a daily and weekly basis to ensure that the station is operating in compliance with its regulatory obligations at all times.
15. Newcap claimed that CHNR-FM is not competitive with the other radio stations serving the Winnipeg market. In support of its claim, Newcap noted that, according to the Bureau of Broadcast Measurement's data for Spring 2005, CHNR-FM received only a 2.3% share of total tuning in Winnipeg's central market area. Newcap also stated that CHNR-FM generated only \$240,000 in revenues in the broadcast year ending 31 August 2005.
16. With respect to the new condition of licence proposed by the opposing interveners, Newcap pointed out that none of these interveners objected to the conditions of licence proposed by Radiolink in its application for a broadcasting licence.

Further submission

17. Subsequently, in a letter dated 29 August 2005, the Commission asked Newcap to comment on the appropriateness of imposing additional requirements on CHNR-FM with respect to the distribution of its category 2 and category 3 musical selections, between 6:00 a.m. and 6:00 p.m., Monday to Friday.
18. In response to the Commission's letter, Newcap maintained that CHNR-FM has operated in compliance with its conditions of licence since its first broadcast day. Newcap also reiterated that it is prepared to abide by CHNR-FM's current conditions of licence. However, in Newcap's view, the imposition of an additional condition of licence requiring CHNR-FM to ensure that 40% of its musical selections aired between 6:00 a.m. and 6:00 p.m., Monday to Friday, are drawn from category 3 is unnecessary.
19. Newcap submitted that CHNR-FM is a stand-alone FM station competing against large broadcasters who own multiple radio licences in the Winnipeg market, who are unrestricted by conditions of licence as to music formats, and who are generating substantial revenues. Newcap further argued that stations, such as CHNR-FM, that operate in a specialty format are already severely limited in their ability to adjust their

music formats because of their conditions of licence restricting the amount of music that they may broadcast from certain music categories. According to Newcap, the addition of a condition of licence such as the one proposed by the opposing interveners would limit CHNR-FM's chances of being even modestly successful.

Commission's analysis and determination

20. When parties are granted licences to operate broadcasting undertakings and sell the undertakings after a short period of time, the Commission examines such transactions carefully to ensure that they do not compromise the integrity of the licensing process.
21. In the present case, the Commission notes that the proposed transaction involves the transfer of ownership of a radio station that was approved in August 2002 in Decision 2002-225 following a highly competitive public process. CHNR-FM began operation on 2 June 2003.
22. The vendor, Radiolink, is a small, independent broadcaster that has no other radio holdings. It is competing in a market that is served by well-established broadcasters who own multiple broadcasting holdings. Of the thirteen other commercial radio stations licensed to serve the Winnipeg market, Rogers and Standard Radio Inc. each own two FM stations, Corus owns one AM station and one FM station, while CHUM owns one AM station and two FM stations. CanWest MediaWorks Inc. (CanWest) (formerly known as Global Communications Limited)³, CKJS Limited (CKJS), Christian Radio Manitoba Ltd. (CRM) and Kesitah Inc. (Kesitah) each own one FM station. In addition to CHNR-FM, there are four other radio stations that are licensed to operate in a specialty format: a jazz radio station operated by CanWest, an ethnic radio station operated by CKJS, and two Christian music radio stations, one operated by CRM and the other operated by Kesitah. The remaining commercial radio stations operate in mainstream formats.
23. The Commission notes that CHNR-FM is not profitable, nor is it expected to be in the foreseeable future. Radiolink has indicated that it does not have sufficient resources to sustain the operation of CHNR-FM. Furthermore, Radiolink does not stand to realize an unreasonable financial gain from the sale of CHNR-FM.
24. The purchaser, Newcap has the resources, experience and expertise to compete in the Winnipeg radio market. The Commission considers that the introduction of Newcap as a new player into Winnipeg market will not negatively affect the level of competitiveness in the market. The Commission is satisfied that CHNR-FM and the audience it serves will benefit from Newcap's broadcasting expertise and its ability to ensure that the station attains financial viability.

³ On 1 September 2005, Global Communications Limited, Global Television Network Inc., CanWest Media Inc. and certain other CanWest corporations amalgamated to continue as CanWest MediaWorks Inc.

25. Based on the evidence filed in the proceeding, the Commission finds the applicant's valuation of the transaction to be reasonable and has no concerns with respect to the availability or the adequacy of the required financing. The Commission also notes that the proposed tangible benefits associated with this transaction represent 6% of the value of the transaction, in accordance with the benefits requirements set out in the Commercial Radio Policy.
26. With respect to the opposing interveners' allegation that CHNR-FM has not been operating in compliance with its regulatory obligations, the Commission is of the view that the findings in the analysis, commissioned by Rogers, of the music broadcast during the week of 12 to 18 April 2005 were substantially affected by the fact that 30% of the music broadcast in that week was unidentified. The Commission also notes that Newcap has made a commitment to abide by CHNR-FM's current conditions of licence. In addition, the Commission has noted the statements made by Newcap in response to the opposing intervention that at least 40% of the music aired by CHNR-FM is drawn from category 3, and includes concert, jazz, folk and non-classic religious music, and that the station's primary audience is composed of those aged 45 years and over. The Commission considers that Newcap has addressed the concerns raised by the opposing interveners.

Conclusion

27. In light of all of the above, the Commission is satisfied that the transaction is consistent with the objectives of Decision 2002-225 that the station provide programming diversity to the Winnipeg radio market and not have an undue negative impact on incumbent commercial radio stations in the market. Further, the Commission is satisfied that the vendor will not profit from the sale of the station so soon after obtaining a broadcasting licence to operate the station. Accordingly, the Commission concludes that the transaction does not compromise the integrity of the licensing process, and that approval of the proposal is in the public interest. The Commission therefore **approves** the application by Newcap Inc., on behalf of CKVN Radiolink System Inc., for authority to transfer the effective control of CKVN Radiolink System Inc. to Newcap Inc.
28. The Commission finds that the imposition of a condition of licence on CHNR-FM with respect to the distribution of musical selections from category 2 and category 3 is not warranted. The Commission nevertheless reminds Newcap that CHNR-FM was licensed following a highly competitive process, and that an important factor in the Commission's decision to award a broadcasting licence to Radiolink was the market diversity to be gained from the proposed music format, which was based on a condition of licence that no more than 60% of the music aired in each broadcast week would be devoted to category 2 selections, and, as a consequence, at least 40% of the remaining music would be devoted to category 3 selections.

29. The Commission expects Newcap to distribute CHNR-FM's blend of a maximum of 60% category 2 musical selections and a minimum of 40% category 3 musical selections reasonably throughout the broadcast day and the broadcast week with particular attention to ensuring a reasonable distribution of those musical selections between 6:00 a.m. and 6:00 p.m., Monday to Friday. The Commission will review Newcap's performance in this regard at the time of CHNR-FM's next licence renewal.

Employment equity

30. 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

This decision is to be appended to the 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>