



Broadcasting Decision CRTC 2006-90

Ottawa, 24 March 2006

Newcap Inc.

Charlottetown, Prince Edward Island

Application 2005-0436-7

Public Hearing at Charlottetown, Prince Edward Island

3 October 2005

English-language FM radio station in Charlottetown

*In this decision, the Commission **approves in part** an application by Newcap Inc. (Newcap) for a broadcasting licence to operate a new English-language, commercial FM radio station in Charlottetown. However, Newcap must, within three months of the date of this decision, submit for the Commission's approval, an application proposing the use of another frequency and technical parameters that are acceptable to the Commission and the Department of Industry for use in the Charlottetown market.*

Background

1. The application by Newcap Inc. (Newcap) was one of four applications to serve Charlottetown considered at the 3 October 2005 public hearing. Newcap and Maritime Broadcasting System Limited (Maritime) both proposed to convert existing local AM radio stations to the FM band. In addition, Newcap and Coast Broadcasting Ltd. (Coast) each proposed to establish new FM radio stations.
2. The Commission's determination that the Charlottetown market can support the conversion of the two existing local AM radio stations, as well as a new commercial FM radio station is set out in *Licensing of new radio stations to serve Charlottetown, Prince Edward Island – Introduction to Broadcasting Decisions CRTC 2006-88 to 2006-91*, Broadcasting Public Notice CRTC 2006-34, 24 March 2006 (Public Notice 2006-34). That public notice also summarizes the rationale underlying the Commission's approval of two conversions from the AM band to the FM band, as well as this application.
3. In *CFCY Charlottetown – Conversion to FM band*, Broadcasting Decision CRTC 2006-89, and *CHTN Charlottetown – Conversion to FM band*, Broadcasting Decision CRTC 2006-88, both of today's date, the Commission has also approved applications by Maritime and Newcap respectively, to convert existing AM stations in Charlottetown to the FM band. In *Denial of application proposing radio service for Charlottetown, Prince Edward Island*, Broadcasting Decision CRTC 2006-91, also dated 24 March 2006, the Commission has denied a competing application by Coast.

The application

4. Newcap is a wholly owned subsidiary of Newfoundland Capital Corporation Limited, which is legally controlled by Mr. Harold R. Steele. It owns radio stations in Alberta, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, including CHTN Charlottetown.
5. Until January 2005, CHTN and Maritime's two Charlottetown stations, CFCY and CHLQ-FM were operated under a local management agreement (LMA)¹. When instituted in the mid-1990s, LMAs were considered to be one possible solution to the radio industry's financial difficulties at the time.
6. Newcap proposed to operate a new FM radio station to be known as "The Island". The Island would serve Charlottetown, operating as an English-language commercial FM radio programming undertaking at 89.9 MHz (channel 210C1) with an effective radiated power of 100,000 watts.
7. Newcap stated that, if its application were approved, its existing AM station and its proposed new FM station would be programmed independently, with separate program directors and on-air employees. Synergies would, however, flow from the applicant's intention to use the same general manager, sales manager and receptionist for both stations. There would also be opportunities for mutual support through the ability to share staff resources in case of illness and during vacations.
8. The proposed station would offer a blend of music consisting of new and Classic Rock from the late 1960s to the hits of today, targeting primarily male listeners aged 25 to 44. A minimum of 35% of the popular (category 2) musical selections aired during each broadcast week would be Canadian selections, in accordance with the minimum level of Canadian category 2 musical selections set out in the *Radio Regulations, 1986*.
9. Newcap proposed that approximately 13 hours and 15 minutes of the proposed station's weekly programming would be devoted to spoken word programming, including 3 hours 30 minutes of news, presented in 53 newscasts each week. Other spoken word programming would include updates of community events, presented in eight 60-second packages each day, as well as a daily feature during newscasts to be known as *Island Cause*, consisting of a charity event update. The proposed station would also provide coverage of local entertainment and arts four times daily, with a feature called *PEI Rocks*. Other proposed musical features would include *Then & Now*, *Year in Your Ear* and *Sonic Source*.

¹ A local management agreement is defined in the *Radio Regulations, 1986* as "an arrangement, contract, understanding or agreement between two or more licensees or their associates that relates, directly or indirectly, to any aspect of the management, administration or operation of two or more stations that broadcast in the same market."

10. The applicant indicated that it would not participate in the Canadian talent development (CTD) plan created by the Canadian Association of Broadcasters. Instead, Newcap proposed contributions amounting to \$1 million over a period of seven years to support CTD initiatives, allocated on an annual basis as follows:
 - \$70,000 to the Radio Starmaker Fund;
 - \$39,857 to the East Coast Music Association and the Prince Edward Island Music Awards Association; and
 - \$33,000 to the Music Talent Development Fund for the benefit of students at the University of Prince Edward Island (UPEI).
11. In each broadcast year, the Music Talent Development Fund would cover the costs of four Master Class visiting instructors, recitals by visiting faculty, professional marketing for the UPEI Department of Music Recital Series, and three summer program bursaries for deserving and gifted students.

Interventions

12. Interventions were submitted in support of this application, one expressed general concerns, and two were submitted in opposition to it.
13. The Canadian Independent Record Production Association (CIRPA) expressed a general concern with the level of CTD funding proposed to be directed to the Foundation to Assist Canadian Talent on Record (FACTOR). In CIRPA's opinion, "the best use of CTD contributions is to direct the funds to FACTOR and utilize the expertise and knowledge available to FACTOR to maximize benefits from these monies."
14. In its opposing intervention, Maritime stated that, if the Commission were to approve other applications related to FM radio in Charlottetown, but deny its own application to convert CFCY to the FM band, the result would create an uneven playing field. Maritime noted that, until recently, the Maritime Charlottetown radio stations CFCY and CHLQ-FM were operated under an LMA with Newcap's AM station CHTN². Maritime indicated that, following the discontinuation of the LMA, the competitive landscape in Charlottetown had changed, and that the operating margins of Maritime have been adversely affected.

² In *The Commission's policy on local management agreements (LMAs) – Determinations concerning the appropriateness of various existing and proposed LMAs, including local sales agreements, between licensees of radio stations serving the same market*, Broadcasting Public Notice CRTC 2005-10, 31 January 2005, the Commission determined that the continuance of the LMA between Newcap and Maritime was no longer warranted, and requested that the parties terminate the arrangement by 31 May 2005. Maritime and Newcap have both confirmed that they are now operating independently.

15. In addition, Maritime expressed concern that Newcap's proposed use of frequency 89.9 MHz would negate any opportunity for that frequency to be used in Halifax, where there are no other alternatives. Maritime was of the view that alternatives to 89.9 MHz exist for use in the Charlottetown market.
16. Mr. Brian Crane expressed the view that there are already enough radio stations in Prince Edward Island that offer Rock music, and that Newcap should instead offer traditional music in support of local fiddlers.

Commission's analysis and determinations

17. In Public Notice 2006-34, the Commission set out its determination that the Charlottetown market can support the conversion of the two existing local AM stations to the FM band without creating any undue negative impact on the Charlottetown radio market. In addition, based on market factors and economic indicators, the Commission concluded in that public notice that the Charlottetown market could accommodate the entry of one new commercial FM radio station that would concentrate on providing service to that market.
18. Based on its assessment of the applications by Newcap and Coast for new FM stations to serve Charlottetown, in Public Notice 2006-34 the Commission determined that approval of the application by Newcap would ensure that competitive balance in the Charlottetown market is maintained, following the discontinuation of the LMA between Newcap and Maritime. Approval of the Newcap proposal would also allow the applicant to develop synergies with its existing service. The Commission also noted that the Newcap proposal would add programming diversity to the Charlottetown market, and repatriate listeners who currently tune to CKTO-FM Truro, Nova Scotia, an out-of-market radio station that provides a rock music format. The Commission also notes Newcap's significant commitment to expend \$1 million over a seven-year licence term for CTD.
19. The Commission notes that the Newcap application for a new commercial FM station to serve Charlottetown was technically mutually exclusive with two applications for the use of the same frequency in Halifax, Nova Scotia, heard at the 16 January 2006 Public Hearing in the National Capital Region. The Department of Industry (the Department) has identified 89.9 MHz as the last Class C1 channel available to the Halifax market. According to the Department, there are other FM allotments in Charlottetown, but no comparable alternatives in Halifax.
20. In light of all of the above, the Commission **approves in part** the application by Newcap Inc. for a broadcasting licence to operate an English-language, commercial FM radio programming undertaking at Charlottetown, Prince Edward Island. However, the applicant's proposed use of frequency 89.9 MHz is **denied**.

21. Subject to the limitations set out below at paragraph 23, the licence will expire 31 August 2012. It will 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 number 5. The Commission notes the applicant's commitments for contributions to CTD. A **condition of licence** is set out in the appendix to this decision requiring the applicant to adhere to its commitments to minimum annual financial contributions to CTD following the commencement of operations. The Commission expects the applicant to contribute a total of \$1,000,000 over a period of seven consecutive broadcast years as proposed.

Issuance of the licence

22. The Commission will only issue the licence, and it will only be effective at such time as:
- The applicant submits, within three months of the date of this decision, an amendment to its application proposing the use of an FM frequency and technical parameters that are acceptable to both the Commission and the Department. This amended application will form part of a public process; and
 - 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 24 March 2008. 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.

Cultural diversity

23. In *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998, the Commission encouraged broadcasters to reflect the cultural diversity of Canada in their programming and employment practices, especially with respect to news, music and promotion of Canadian artists.
24. The Commission expects Newcap to reflect Canada's cultural diversity in the proposed station's programming and employment practices.

Employment equity

25. Because this licensee 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>

Appendix to Broadcasting Decision CRTC 2006-90

Conditions of licence

1. The licence will 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 number 5.
2. Upon commencement of operations, the licensee shall contribute an annual minimum of \$142,857 to the development and promotion of Canadian talent, as follows:
 - \$70,000 to the Radio Starmaker Fund;
 - \$39,857 to the East Coast Music Association and the Prince Edward Island Music Awards Association; and
 - \$33,000 to the Music Talent Development Fund for the benefit of students at the University of Prince Edward Island, as described in this decision.