



Broadcasting Decision CRTC 2007-106

Ottawa, 4 April 2007

Newcap Inc.

Dartmouth, Nova Scotia

Application 2006-1067-7

Public Hearing in the National Capital Region

18 December 2006

CFDR Halifax – Conversion to FM band

*The Commission **approves** the application by Newcap Inc. for a broadcasting licence to operate a new English-language FM radio programming undertaking in Dartmouth to replace its AM station CFDR Halifax, subject to the sale of its voting interest in Metro Radio Group Inc., the licensee of CKUL-FM Halifax.*

*The Commission **denies** Newcap Inc.'s request for an exemption to the Common ownership policy.*

The application

1. The Commission received an application by Newcap Inc. (Newcap) for a broadcasting licence to operate a new English-language FM commercial radio programming undertaking in Dartmouth to replace its AM station CFDR Halifax. The proposed station would operate at 88.9 MHz (channel 205C1) with an average effective radiated power (ERP) of 21,000 watts.
2. Newcap currently owns CFDR and CFRQ-FM Dartmouth. It also holds a 50% voting interest in Metro Radio Group Inc. (Metro Radio),¹ the licensee of CKUL-FM Halifax (formerly CIEZ-FM Halifax). Pursuant to a management agreement between the shareholders, Newcap manages and controls the station.
3. Under the Commission's Common ownership policy set out in the *Commercial Radio Policy 1998*, Public Notice 1998-41, 30 April 1998 (the Commercial radio policy), a person may own or control up to two FM stations in the same language in a market such as that of Halifax. Newcap requested an exemption to the Commission's Common ownership policy, given that this conversion from AM to FM would see it exceed the limit of two FM stations in the same language. Newcap also submitted that it is prepared to divest itself of its voting interest in Metro Radio if the Commission denies its request for an exemption to the Common ownership policy.

¹ CHUM Limited also holds a 50% voting interest in Metro Radio.

4. The new station would offer an Alternative Rock format. The local and spoken word programming would include news and spoken word programming scheduled throughout the day. Newscasts would total seven hours weekly. Additional spoken word programming would include *The Burnt Toast Morning Show*, *The Anti-Love Zone*, *Voices from Halifax* and *The Very Very Late Breakfast Show*.
5. Newcap proposed, upon commencement of operations, to devote \$40,000 annually, for a total of \$280,000 over seven consecutive broadcast years, in direct expenditures to support Canadian talent development (CTD). That amount would be allocated as follows:
 - \$10,000 per year to the Radio Starmaker Fund to support the development of talent on a national scale;
 - \$10,000 per year to Canada Music Week to advance the profile of Canadian music and to help launch the careers of Canadian music artists; and
 - \$20,000 per year to the Halifax School Board to assist in the purchase of instruments, music scholarships, the development of music curriculum and music festivals.

Interventions

6. The Commission received interventions in support of and in opposition to this application, as well as a comment.
7. The supporting interventions were submitted by community groups, the Halifax Chamber of Commerce, the Halifax Regional Municipality, Warner Music Canada, individuals representing independent artists and records, and various local businesses that advertise with Newcap. These interveners submitted that the new FM station would add diversity to the Halifax market and would provide exposure for emerging Canadian alternative rock artists. Several of the interventions mentioned Newcap's ongoing support for independent and local artists, as well as its support for not-for-profit and charitable organizations.
8. The interventions in opposition were submitted by Maritime Broadcasting System Limited (Maritime), HFX Broadcasting Inc. (HFX), the Nova Scotia Country Music Hall of Fame and various individuals, including recording artists and current CFDR listeners. Most of these interveners did not oppose the conversion of CFDR from the AM to the FM band but opposed the format change from Country to Alternative Rock. These interveners were concerned primarily that there would be a loss of music diversity in the Halifax market.

9. Maritime, the licensee of CHNS-FM and CHFX-FM Halifax, submitted that Newcap's application violates the Commercial radio policy, which states that a person cannot own or control more than two FM stations in a market like that of Halifax. Maritime alleged that Newcap continues to enjoy synergies with the Metro Radio stations and therefore has been in non-compliance with *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 and *CKUL-FM Halifax – Licence renewal*, Broadcasting Decision CRTC 2005-28, both dated 31 January 2005, in which the Commission ordered the termination of a local sales agreement (LSA) between CHUM Limited (CHUM) and Newcap. Maritime requested that the Commission require Newcap to divest itself of its 50% voting interest in CKUL-FM before considering Newcap's application for the conversion of the AM station to FM.
10. HFX, the licensee of CKHZ-FM Halifax, submitted a comment in which it raised concerns that the approval of Newcap's application would have a negative impact on the diversity of voices in the Halifax market. It argued that the Newcap application to convert CFDR to the FM band should be approved only on the condition that it divest itself of its 50% voting interest in CKUL-FM to ensure compliance with the Common ownership policy.

Applicant's response

11. In its response to the interventions, Newcap confirmed that it had ceased the LSA with CHUM as of the end of May 2005 and that all sales for Newcap are conducted by its own staff. Newcap also reiterated its willingness to divest itself of its 50% voting interest in CKUL-FM should the Commission deem it necessary. Finally, Newcap added that the proposed FM station would be a new voice for young people in the Halifax market.

Commission's analysis and determinations

12. In the Commercial radio policy, the Commission set out its Common ownership policy for commercial radio stations, which states the following:

...in markets with less 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 commercial stations or more operating in a given language, a person may be permitted to own or control as many as 2 AM and 2 FM stations in that language.
13. The Commission is not satisfied that Newcap has provided compelling reasons to warrant an exemption to the Common ownership policy. Consequently, the Commission **denies** Newcap Inc.'s request for such an exemption.

14. The Commission considers that approval of the application for a conversion to FM would allow Newcap to compete with other Halifax radio licensees on a more equitable basis because of the appeal of a music service on FM. The Commission also considers that the format proposed by the applicant would add program diversity and would not be directly competitive with the programming of any radio stations currently serving the market, or approved in Broadcasting Decisions CRTC 2004-513, 2004-514, 2004-515 and 2004-516.²
15. In light of the above, the Commission **approves** the application by Newcap Inc. for a broadcasting licence to operate a new English-language FM commercial radio programming undertaking in Dartmouth to replace its AM station CFDR Halifax, subject to the sale of its voting interest in Metro Radio Group Inc. The station will operate at 88.9 MHz (channel 205C1) with an average ERP of 21,000 watts.
16. The Commission notes that in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006 (Public Notice 2006-158), the Commission set out a new approach to the development and promotion of Canadian artists that is expected to be implemented on 1 September 2007. In order to reflect a new emphasis on development initiatives that lead to the creation of audio content for broadcast using Canadian resources, the Commission will replace the expression “Canadian talent development” (CTD) with “Canadian content development” (CCD). Each radio station holding a commercial radio licence will be required to make a basic annual CCD contribution based on its revenues in the previous broadcast year.
17. The Commission notes that this applicant has made commitments for CTD that will be imposed as conditions of licence. Amounts required under these conditions of licence may be deducted from the amounts that will be required under the new basic CCD contribution.
18. The Commission reminds the applicant that any development initiatives that have not been allocated to specific parties by condition of licence should be allocated to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists. Parties and initiatives eligible for CCD funding are identified in paragraph 108 of Public Notice 2006-158.
19. The licence will expire 31 August 2013. 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, as well as to the following **condition**:

² *News/Talk commercial FM radio station in Halifax*, Broadcasting Decision CRTC 2004-513; *Youth Contemporary FM radio station in Halifax*, Broadcasting Decision CRTC 2004-514; *Easy Listening FM radio station in Halifax*, Broadcasting Decision CRTC 2004-515; *Christian music FM radio station in Halifax*, Broadcasting Decision CRTC 2004-516, all dated 26 November 2004.

The licensee shall make, upon commencement of operations, direct expenditures of at least \$40,000 in each broadcast year for the development of Canadian talent, allocated as follows:

- \$10,000 per year to the Radio Starmaker Fund;
- \$10,000 per year to Canada Music Week; and
- \$20,000 per year to the Halifax School Board.

20. The licensee is authorized, by **condition of licence**, to simulcast the programming of the new FM station on CFDR for a transition period of three months following the commencement of operations of the FM station. Pursuant to sections 9(1)(e) and 24(1) of the *Broadcasting Act* (the Act), and consistent with the licensee's request, the Commission **revokes** the licence for CFDR effective at the end of the simulcast period.

Issuance of the licence

21. The Commission will only issue the licence, and it will only be effective at such time as:

- the applicant submits an application, on behalf of Metro Radio, for the transfer of its 50% voting interest and for the transfer of effective control to a party that is in compliance with the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998, and *Direction to the CRTC (Ineligibility to Hold Broadcasting Licences)*, P.C. 1995-2108, as amended by P.C. 1997-629, 22 April 1997, within six months of the date of this decision; 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 4 April 2009. 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.

22. The Department of Industry (the Department) has advised the Commission that, while this application is conditionally technically acceptable, it will only issue a broadcasting certificate when it has determined that the proposed technical parameters will not create any unacceptable interference with aeronautical NAV/COM services.

23. The Commission reminds the licensee that, pursuant to section 22(1) of the Act, no licence may be issued until the Department notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.

Employment equity

24. 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>