



Broadcasting Decision CRTC 2004-522

Ottawa, 26 November 2004

Newcap Inc.

Fredericton, New Brunswick

Application 2003-1744-7

Public Hearing at Halifax, Nova Scotia

1 March 2004

Classic Rock FM radio station in Fredericton

*The Commission **approves** the application by Newcap Inc. for a broadcasting licence to operate an English-language commercial FM radio station in Fredericton, New Brunswick. The station will operate in a Classic Rock music format.*

*The Commission's general approach to the radio applications considered at the 1 March 2004 Public Hearing in Halifax is set out in Introduction to Broadcasting Decisions CRTC 2004-513 to 2004-525 – Licensing of new FM radio stations in Halifax, Moncton, Saint John and Fredericton, *Broadcasting Public Notice CRTC 2004-91, also issued today.**

Introduction

1. The Commission received an application by Newcap Inc. (Newcap) for a broadcasting licence to operate an English-language commercial FM radio programming undertaking in Fredericton, New Brunswick at 92.3 MHz (channel 222C1) with an effective radiated power of 76,000 watts. Newcap proposed to operate the station in a Classic Rock music format.
2. Newcap is a wholly-owned subsidiary of Newfoundland Capital Corporation Limited, which is ultimately controlled by Mr. Harold R. Steele. Newcap operates a number of radio stations throughout Atlantic Canada as well as, directly or indirectly, radio stations in Ontario and Alberta.
3. The Commission considered the Newcap application at a public hearing convened in Halifax on 1 March 2004. At the hearing, the Commission examined a total of six applications for new English-language radio services in Fredericton: five for commercial stations, including two Christian music services, and one for a low-power tourist information service. The Commission's general approach to the radio applications considered at the 1 March 2004 Public Hearing in Halifax is set out in *Introduction to Broadcasting Decisions CRTC 2004-513 to 2004-525 – Licensing of new FM radio stations in Halifax, Moncton, Saint John and Fredericton, Broadcasting Public Notice CRTC 2004-91, also issued today.* Based on the record of the hearing, the Commission considers that the Fredericton market can accommodate one new commercial station that

is targeted to a mainstream audience. It further considers that a low-power Christian music station and a low-power tourist information service can be licensed given that these low-power stations would not have an undue negative effect on existing stations in the market.

Interventions

4. The Commission received three interventions regarding Newcap's application for a Classic Rock format: one in support from Aboriginal Voices Radio Inc., and two in opposition by Astral Media Radio Atlantic Inc. (Astral) and the National Campus and Community Radio Association (NCRA).
5. Astral, licensee of three Fredericton radio stations (CKHJ, CFX-Y-FM and CIBX-FM), submitted that the Newcap proposal would not bring programming diversity to this market. The subject of programming diversity is addressed later in this decision.
6. The NCRA did not oppose directly the licensing of the Newcap application, but had a concern with respect to the technical impact that the new station might have on the operation of CFMH-FM, which is a low-power campus radio station associated with the University of New Brunswick in Saint John. Specifically, the NCRA submitted that Newcap's proposed station at 92.3 MHz, with an effective radiated power of 76,000 watts, would cause undue interference with CFMH-FM's service, particularly in the Grand Bay/Welsford area of Saint John. As a result, CFMH-FM would be forced to increase power or change its 92.5 MHz frequency, with an attendant cost of approximately \$40,000, an amount which the campus station could not afford.

The applicant's replies

7. Newcap disagreed with the views expressed by Astral related to the programming diversity in the Fredericton market.
8. With respect to the issues raised by the NCRA regarding the signal of CFMH-FM, Newcap recognized the NCRA's concern and promised that, if licensed, Newcap would "do whatever it takes financially, technically and otherwise, to make sure that their signal does not suffer any degradation."
9. The Commission notes that, as a low-power radio undertaking, CFMH-FM has an unprotected status. In other words, under existing policies of the Commission and the Department of Industry (the Department), the onus is on low-power radio undertakings to implement either a change of frequency, or else to cease operation altogether, if its service is either compromised by a regular high-power station such as the one contemplated in the Newcap application, or where the continued operation of the low-power station would cause interference to the high-power station. Under the circumstances, the Commission considers that Newcap's commitment to the NCRA and CFMH-FM is a generous solution to this issue, and it is satisfied that the difficulties raised in the intervention have been or will be resolved, as suggested by Newcap.

The Commission's analysis and determination

10. In the Introductory Statement to Decisions CRTC 99-480, 99-481 and 99-482, 28 October 1999, the Commission indicated that, pursuant to its *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998 (the Commercial Radio Policy), the factors set out below are generally among those relevant to the evaluation of competitive commercial radio applications:

- the quality of the application;
- the diversity of news voices in the market;
- the market impact of any proposed station on existing stations; and
- the competitive state of the market.

Quality of the application

11. The Commission generally assesses the quality of an application for a new commercial radio station by examining the following:

- local programming proposals and the benefits the applicant would bring to the community;
- commitments to Canadian content;
- the quality of the business plan, including the proposed station format; and
- commitments in regard to Canadian talent development.

Local programming

12. Newcap stated that much of its local, spoken word programming would be dedicated to news, with a weekly total of approximately seven hours. In order to meet this goal, Newcap would dedicate five full-time reporters. More regional news stories would be developed through the use of reporters and staff from Newcap's existing stations in the other capitals of Atlantic Canada, namely St. John's, Halifax and Charlottetown. The applicant would also broadcast *Capital Report*, which would be a three-minute newscast, broadcast twice a day. In addition, nine local newscasts would air in Fredericton from Monday to Friday, with three such newscasts on weekends.

Canadian content

13. Newcap proposed a Classic Rock format, with a target demographic between the ages of 18 and 54. The applicant confirmed that the bulk of the music would be based in the 1970's and 1980's, and that 95% of the music would be "pre-1990." At the same time, Newcap stated that more recent rock music would be incorporated into its programming, with the majority of these selections by Canadian artists. The applicant was confident that the new radio station would meet or exceed the requirements of the *Radio Regulations, 1986* regarding Canadian content, and would provide exposure and support for emerging Canadian talent.

The quality of business plan, including the proposed station format

14. The applicant has proposed a business plan which the Commission considers to be reasonable, given the proposed format and the size of the Fredericton market. This radio station will be the first to operate in Fredericton with a Classic Rock format. In this respect, Newcap noted the high level of out-of-market tuning for this popular format. The Commission considers that the new Newcap station will repatriate a significant portion of this out-of-market tuning. The Commission is also mindful of Newcap's experience in the operation of numerous radio stations across Canada.

Canadian talent development

15. The applicant will participate in the Canadian Talent Development (CTD) Plan (the Plan) created by the Canadian Association of Broadcasters (CAB). Under the Plan, accepted by the Commission in *Contributions by radio stations to Canadian talent development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995, licensees serving markets the size of Fredericton are required to contribute a minimum yearly amount of \$400 to the development of Canadian talent.
16. In addition to the contributions required under the CAB plan, Newcap proposed to allocate \$350,000 over a seven-year licence term for the following CTD projects:
 - \$3,000 annually for seven years, representing a total of \$21,000, to be contributed to the CAB CTD plan, and
 - \$47,000 annually for seven years, representing a total of \$329,000, to the Foundation to Assist Canadian Talent on Record (FACTOR).
17. With respect to its FACTOR contribution, Newcap stated that all of its funding would be allocated to artists in the Fredericton region, a goal that was confirmed in a letter from FACTOR. A **condition of licence** to this effect is set out in the appendix to this decision. The Commission considers that the minimum amount of the budget allocation is to be made over seven consecutive broadcast years, upon commencement of operations.
18. In addition to the CTD commitments noted above, Newcap also proposed to devote \$50,000 each year for seven years, totalling \$350,000, to the Aboriginal Voices Radio Network (AVRN). A **condition of licence** to this effect is set out in the appendix to this decision. As the Commission has stated in the past, while Newcap's proposed funding for AVRN will not contribute directly to the development of Canadian talent, it will certainly contribute to the achievement of the objective set out in section 3(1)(o) of the *Broadcasting Act* (the Act), which states that "programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose."
19. Another initiative planned by Newcap to support CTD is the proposed weekly, one-hour program *Atlantic Exposure* which would "showcase up and coming Atlantic Canadians – singers, songwriters, musicians and bands, as well as established stars like Great Big Sea, Crush and The Trews."

Market impact on existing stations

20. The Fredericton market is currently served by 10 radio stations, of which 7 are English-language and 3 are French-language stations. These include four English-language commercial stations, including a Christian music station, four Canadian Broadcasting Corporation/Société Radio-Canada stations, a French-language community station and an English-language campus station.
21. In analyzing the potential market for new services, potential advertising revenues, and the market impact of any proposed station on existing stations, the Commission examined the state of the economy in Fredericton using data from Statistics Canada and forecasts from the Conference Board of Canada for the Province of New Brunswick. According to that data, the population of the Fredericton Central Market Area is expected to remain constant over the next five years.
22. Over the last five years, the aggregate profit before interest and tax (PBIT) margin¹ for the Fredericton radio market had generally been slightly below the aggregate margin for all English-language commercial radio stations in Canada. However, this changed in the year ending 31 August 2003, where the PBIT margin for Fredericton's commercial stations significantly exceeded the PBIT margin for all commercial radio stations in Canada, which was 19.3%. These results suggest there is room in the market for an additional commercial station that is targeted to a mainstream audience.
23. With respect to diversity in the market, Newcap stated that it is unlikely that more than 5% of the music played on the proposed station would also be played by other stations in the market. With an overwhelming reliance on music recorded before 1990, the applicant is convinced that the new station would offer a service that is substantially different from other Fredericton stations. The Commission is satisfied that the Newcap proposal will contribute to programming diversity in Fredericton.

Competitive state of the market

24. The Commission notes that, as a new entrant, Newcap will increase competition in the Fredericton radio market.

Business arrangements

25. At the hearing, the Commission discussed with Newcap the subject of Local Management Agreements (LMAs) and Local Sales Agreements (LSAs). Newcap currently has an LMA in Thunder Bay, Ontario with C.J.S.D. Incorporated, an LMA in Charlottetown, Prince Edward Island with Maritime Broadcasting Systems Limited, and an LSA in Sudbury, Ontario with Rogers Broadcasting Limited. With respect to the proposed radio undertaking in Fredericton, Newcap confirmed that no LMA or LSA arrangements are contemplated. At the same time, the Commission remains concerned about potential anti-competitive behaviour that might accompany such agreements,

¹ The PBIT margin is defined as profit before interest and tax expressed as a percentage of total revenues.

whether they are initiated by Newcap or any other broadcaster. The Commission, therefore, reminds Newcap that, should the applicant decide to enter into an arrangement, contract or understanding with another broadcaster operating in the Fredericton market, prior approval must be obtained, pursuant to section 11.1 of the *Radio Regulations, 1986*.

Cultural diversity

26. In the Commercial Radio Policy, 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.
27. The Commission expects Newcap to reflect the cultural diversity of Canada in its programming and employment practices.

Conclusion

28. The Commission considers that the Classic Rock format proposed by Newcap will add to the variety of the radio programming available in the Fredericton market, and help to fulfil the expectations and needs of listeners in the market. As a result, the new station should serve to repatriate Fredericton listeners who tune to Classic Rock stations in other markets. Newcap will also bring another news voice to the Fredericton market that will focus on matters of local concern, as well as on topics of interest throughout Atlantic Canada. Additionally, commitments to CTD will benefit local talent. As stated earlier, the Commission is satisfied that the Fredericton market can accommodate Newcap's proposed station, and that no existing undertaking will experience an undue negative impact. Overall, the Commission believes that the new station will make an important contribution to fulfilling the requirements of the Broadcasting Policy for Canada, set out in the Act, and the objectives of the Commission's Commercial Radio Policy.
29. Although Newcap's business plan estimated pre-tax losses for its proposed Fredericton station over the first four years of operation, considering Newcap's experience and resources, the Commission is satisfied that the station can be operated viably in the Classic Rock format.
30. The Commission therefore **approves** the application by Newcap Inc. for a broadcasting licence to operate an English-language commercial FM radio programming undertaking in Fredericton, New Brunswick at 92.3 MHz (channel 222C1) with an effective radiated power of 76,000 watts.
31. The licence will expire 31 August 2011 and will be subject to the **conditions of licence** set out in the appendix to this decision.

Issuance of the licence

32. The Department has advised the Commission that, while this application is considered 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.
33. 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.
34. Furthermore, the licence for this undertaking will only be issued once 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 26 November 2006. 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.

Employment equity

35. 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, the Commission does not examine its employment equity practices.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2004-522

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 (Public Notice 1999-137).
2. In addition to the amounts required under condition of licence number 5 set out in Public Notice 1999-137, the licensee shall devote a minimum of \$50,000 during each broadcast year to direct expenditures to support the development of Canadian talent. This minimum includes \$3,000 to be directed to the Canadian talent development plan of the Canadian Association of Broadcasters, and \$47,000 to the Foundation to Assist Canadian Talent on Record, all of which will be directed towards artists in the Fredericton area.
3. The licensee shall devote a minimum of \$50,000 annually to support Aboriginal Voices Radio Network (AVRN).