



Broadcasting Decision CRTC 2005-26

Ottawa, 31 January 2005

Newcap Inc.

Dartmouth, Nova Scotia

Applications 2003-1231-4, 2003-1230-7

Public Hearing in the National Capital Region

7 June 2004

CFDR and CFRQ-FM Dartmouth – Licence renewals

The Commission renews the broadcasting licences for the radio programming undertakings CFDR and CFRQ-FM Dartmouth, from 1 February 2005 to 31 August 2011.

The applications

1. The Commission received applications by Newcap Inc. (Newcap) to renew the broadcasting licences for the radio programming undertakings CFDR and CFRQ-FM Dartmouth, which expire on 31 January 2005.
2. The applications raised the issue of the appropriateness of the continuation of the business arrangement, described as an informal local sales agreement (LSA), currently in place between Newcap and two other local radio broadcasters, namely CHUM Limited (CHUM), licensee of CJCH and CIOO-FM Halifax, and Sun Radio Limited (Sun Radio), licensee of CKUL-FM Halifax¹. Newcap and CHUM share equally in the ownership of Sun Radio.

Interventions

3. The Commission received six interventions in connection with these applications, including three expressing support, from Donna L. Alteen, H. James Megann and James R. Thomson.
4. The Canadian Association of Broadcasters (CAB) noted the informal LSA that exists between Newcap, CHUM and Sun Radio. The intervener commented on the issue of whether or not LSAs are captured under section 11.1 of the *Radio Regulations, 1986* (the Regulations), which pertains to local management agreements (LMAs). The CAB's position is addressed in *The Commission's policy on local management agreements (LMAs) - Determinations concerning the appropriateness of various existing and*

¹ Formerly CIEZ-FM Halifax.

proposed LMAs, including local sales agreements, between the licensees of radio stations serving the same market, Broadcasting Public Notice CRTC 2005-10 (Public Notice 2005-10), also published today.

5. Mr. Manuel Canales, a recent applicant for a broadcasting licence to provide a new radio service in Halifax, expressed his concern that the LSA in place between the three licensees, however informal, had a negative effect on fair competition in the market, and created difficulties for potential new licensees.
6. Maritime Broadcasting System Limited (Maritime), licensee of CHNS and CHFX-FM Halifax, also submitted an intervention objecting to the LSA between Newcap, CHUM and Sun Radio. Maritime noted that the three parties are branded collectively and marketed as “The Metro Radio Group” throughout the Halifax region, and that their combined activities have had a “most detrimental effect on Maritime’s two local stations.” Moreover, the intervener alleged that, as a result of this partnership of the Metro Radio Group, programming diversity has suffered within the marketplace.

The licensee’s replies

7. In reply to interventions, Newcap explained, as did CHUM, that the informal LSA has given local advertisers an opportunity to customize their radio marketing strategies on one or more stations to help them reach potential customers more effectively. Newcap argued that the partnership has generated an increased market for radio advertising revenue, and that all local broadcasters, including Maritime, have the opportunity to profit from this situation. At the same time, Newcap cautioned that “competition in radio does not mean that everyone profits equally, rather, it means that they all have an opportunity to succeed.”
8. At the hearing, Newcap, CHUM and Sun Radio argued further that the Halifax/Dartmouth radio market is extremely competitive, with a number of media outlets fighting for their share of the advertising revenue, and that a combined local sales approach is essential to maintaining and increasing radio advertising revenues in this particular landscape.

The Commission’s analysis and determinations

9. In 1995, the Commission permitted CHUM and Sun Radio to enter into an LMA involving CHUM’s CJCH and CIOO-FM and Sun Radio’s local radio station CKUL-FM. At that time, both broadcasters were experiencing financial hardship in a difficult local radio market, and considered that their economic viability would be better protected through the combination of administrative and sales resources. The LMA stipulated that the programming and news departments of each licensee would remain independent and distinct.

10. In 1998, the LMA was expanded to include Newcap and its Dartmouth stations, CFDR and CFRQ-FM. On 17 December 2001, the Commission approved an application whereby Newcap and CHUM each acquired a 50% voting interest in Sun Radio, with Newcap assuming responsibility for the operation and control of CKUL-FM. The LMA between Newcap, CHUM, and Sun Radio was terminated at that time.
11. The CAB's comments, and the concerns raised by Maritime and by Mr. Canales in their interventions to Newcap's licence renewal applications, were also presented in interventions to the renewal applications by CHUM and Sun Radio. The licensees advised the Commission that, while no formal arrangement was in place or was contemplated at that time, they sell advertising on the five radio stations concerned in various combinations, according to the requirements of the advertisers. It was thus clear at the hearing that, at the very least, the three licensees were working together on local sales under the Metro Radio Group brand name, rather than on a competitive basis.
12. Following the hearing, the licensees filed a copy of a newly-executed agreement that formalized the existing LSA between them. The LSA provides that Newcap will be the sole and exclusive advertising sales representative for the Halifax stations and that Newcap will, through its local and national sales arrangements, secure local, regional and national radio advertising contracts for these stations. Under the agreement, Newcap, CHUM, and Sun Radio will be responsible for setting the rates charged advertisers for airtime on their respective stations, and each will be free to refuse to broadcast advertising on them. The LSA contains a provision that the management, operation and administration of the stations licensed to Newcap and CHUM will remain the sole responsibility of their respective licensees. Newcap is responsible, pursuant to a previous agreement, for the management, operation and administration of Sun Radio. The LSA provides that the revenue earned by each station will equal the actual airtime purchased according to the rates. Finally, under the LSA, Newcap will be responsible for reporting and record keeping with respect to the revenues and trade accounts receivable of each station, and for invoicing and collecting all trade accounts receivable.
13. The issue of whether an LSA is an LMA requiring prior Commission approval under section 11.1 of the Regulations was discussed with the licensee at the hearing and is examined at length in Public Notice 2005-10. In that notice, the Commission concludes that LSAs, such as that between Newcap, CHUM and Sun Radio in respect of their Halifax/Dartmouth radio stations, are LMAs and, as such, require prior Commission approval pursuant to section 11.1 of the Regulations.
14. In *Local Management Agreements*, Public Notice CRTC 1999-176, 1 November 1999, the Commission announced its policy determinations with respect to LMAs. The Commission indicated, among other things, that it would "be generally inclined to approve" LMAs that: include unprofitable stations; include a number of stations that does not exceed the number of undertakings that may be commonly owned under the ownership policy; and are limited to a specific term and represent a temporary alternative business model that will allow the broadcasters to improve their performance. The Commission added that, in exceptional circumstances, it may approve an LMA that

includes the participation of a number of stations that exceeds the limit allowed under the common ownership policy. It emphasized, however, that radio licensees would be required to demonstrate clearly that the participation of radio stations in excess of the allowable ownership limit would be in “the public interest and that it does not create a situation of inequity within the market.”

15. As noted in Public Notice 2005-10, there are five radio stations falling under the Halifax/Dartmouth LSA. This exceeds the number that a single person would generally be permitted to own under the common ownership policy. Moreover, all of the stations in that market reported a positive profit margin, before interest and taxes, as of 31 August 2003. A concern thus arises about the influence of the current business arrangements between radio licensees in that market and on the plans of potential new entrants and their ability to compete. In Halifax/Dartmouth, the presence of two radio stations in the market that are not party to the LSA heightens concerns regarding the agreement and its potential negative impact on the ability of these two stations to compete. A further concern arises with respect to the potential impact of the LSA on the diversity and quality of programming for the reasons discussed in Public Notice 2005-10. The Commission also notes that, in decisions issued on 26 November 2004², it approved applications for licences to carry on four new commercial FM radio undertakings in Halifax.
16. In the Commission’s view, Newcap failed to present a compelling case that its particular circumstances are exceptional or warrant continuation of the LSA currently in place between it, CHUM and Sun Radio, beyond a reasonable period to allow the parties to wind up this business arrangement in an orderly fashion. More specifically, the Commission considers that the LSA is a potential impediment to healthy competition between these and other existing local broadcasters, might discourage other broadcasters from entering the market in the future, and might negatively affect the quality and diversity of programming in the market. Its termination would thus be in the public interest.
17. Accordingly, the Commission authorizes the licensee, by **condition of each licence**, to continue to operate its stations under the terms of the current LSA until no later than 31 May 2005, at which time the LSA must be terminated.

Conclusion

18. On the basis of its review of these licence renewal applications and of the licensee’s past performance, the Commission **renews** the broadcasting licences for the radio programming undertakings CFDR and CFRQ-FM Dartmouth, from 1 February 2005 to

² See *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; and *Christian music FM radio station in Halifax*, Broadcasting Decision CRTC 2004-516, all dated 26 November 2004.

31 August 2011. The licences will be subject to the **conditions of licence** set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, as well as to the condition set out in this decision concerning termination of the LSA between Newcap, CHUM and Sun Radio.

Employment equity

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