



Broadcasting Public Notice CRTC 2005-10

Ottawa, 31 January 2005

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

The Commission has determined that local sales agreements (LSAs) fall within the definition of a local management agreement (LMA) contained in section 11.1 of the Radio Regulations, 1986 (the Regulations). As such, pursuant to section 11.1 of the Regulations, licensees of commercial radio stations serving the same market who wish to enter into an LSA, or any other similar business arrangement, whether formal or informal, must first apply for Commission approval and obtain conditions of licence authorizing them to do so.

The Commission is concerned by the possible negative consequences of LMAs, including LSAs, over time, such as the potential disadvantage to which they subject competitors who are not party to them, the chill effect such agreements may have on the decisions of potential new entrants, and the extent to which they may reduce, ultimately to the detriment of the service provided to the public, the incentive for some or all parties to an LMA to manage their stations efficiently, compete effectively and improve their programming performance. Accordingly, the Commission will generally approve LMAs only where it is satisfied that the circumstances so warrant, taking into account the general principles and other relevant elements of consideration identified in Local Management Agreements, Public Notice CRTC 1999-176, 1 November 1999 (the 1999 LMA Policy). The Commission will continue to reach such determinations on a case-by-case basis.

This public notice accompanies decisions¹ approving the licence renewal applications by the licensees of fifteen commercial radio stations considered at the 7 June 2004 Public Hearing in the National Capital Region. They include four stations serving Sudbury and three serving Thunder Bay, Ontario; three serving Charlottetown, Prince Edward Island; and five serving Halifax/Dartmouth, Nova Scotia. The licensees are, in each case, party to an LSA or another LMA. The Commission, based on the evidence presented at the 7 June 2004 Public Hearing, is not satisfied that the ongoing existence of any of the agreements concerned is warranted in the circumstances, beyond a

¹ See Broadcasting Decisions CRTC 2005-20 to 2005-28, 31 January 2005.

reasonable period to allow the parties to wind them up in an orderly fashion. Accordingly, it has permitted the licensees, by condition of licence in each case, to continue to operate their stations under the terms of their current agreements until 31 May 2005, at which time they must be terminated.

The Commission intends to review all aspects of its 1999 LMA Policy as part of its overall Radio Policy review, which it plans to conduct in the near future.

Applicants at the 7 June 2004 Public Hearing

1. At the 7 June 2004 Public Hearing in the National Capital Region, the Commission considered applications filed by six licensee companies for renewal of the broadcasting licences they hold for the operation of a total of fifteen radio stations. The stations include four that serve Sudbury and three that serve Thunder Bay, Ontario. Three of the other stations serve Charlottetown, Prince Edward Island, while the remaining five stations serve Halifax/Dartmouth, Nova Scotia.
2. In the case of the Thunder Bay stations, a local management agreement (LMA) was in place at the time of the hearing between Newcap Inc. (Newcap), licensee of CJLB-FM, and C.J.S.D. Incorporated (CJSD), licensee of CKPR and CJSD-FM. The licensees concerned were called to appear at the hearing primarily so that the Commission could examine their requests, pursuant to section 11.1 of the *Radio Regulations, 1986* (the Regulations), for conditions of licence authorizing the continuance of their LMA.
3. The licensees of the stations serving Charlottetown, namely Newcap, licensee of CHTN, and Maritime Broadcasting System Limited (Maritime), licensee of CFCY and CHLQ-FM, had also been operating under the terms of an LMA. They appeared at the hearing to allow the Commission to investigate their plans to terminate that LMA and instead, to operate those stations under the terms of a local sales agreement (LSA).
4. In the case of each of the two remaining groups of stations consisting of those serving Sudbury and those serving Halifax/Dartmouth, the licensees' appearance at the hearing was, among other things, to enable the Commission to discuss the appropriateness of the continuation of certain business arrangements currently in place between them, described as LSAs. In Sudbury, an LSA exists between Newcap, as licensee of CHNO-FM, and Rogers Broadcasting Limited (Rogers), licensee of CJMX-FM, CJRQ-FM and CIGM. In Halifax/Dartmouth, an LSA is also in place among Newcap, licensee of CFRQ-FM and CFDR Dartmouth, CHUM Limited (CHUM), licensee of CJCH and CIOO-FM Halifax, and Sun Radio Limited (Sun Radio), licensee of CKUL-FM (formerly CIEZ-FM) Halifax.

5. During the course of the hearing, Rogers informed the Commission that it has LSAs with broadcasters in other markets, including Timmins, Kitchener and Orillia/Midland, Ontario, while Newcap advised of such an agreement in place between itself and another radio broadcaster in Ottawa, and CJSD confirmed that there is an LSA between its Thunder Bay stations and another station in that vicinity, CFQK-FM Kaministiquia, licensed to Northwest Broadcasting Inc.
6. The Commission sought to examine whether LSAs were, in fact, LMAs, and whether and in what circumstances it was appropriate to authorize them.

Regulatory background

The Commission's 1998 Commercial Radio Policy

7. In *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998 (Public Notice 1998-41; the Commercial Radio Policy), the Commission set out its revised policy for commercial radio. The Commission identified, as the primary objective of the Commercial Radio Policy, the development of “a strong, well-financed radio industry that is better poised to achieve its obligations under the [Broadcasting] Act and to meet the challenges of the 21st century.”
8. As one means of achieving that primary objective, the Commission decided to revise its policy on common ownership. Until then, the Commission's policy had been to restrict the ownership of radio stations by a single person in a given market to no more than one station operating in any one frequency band and language. Under the Commercial Radio Policy, in markets with less than eight commercial stations operating in a given language, a person could henceforth 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 could be permitted to own or control as many as two AM and two FM stations in that language.
9. In the Commission's view, the increased consolidation of ownership permitted under the Commercial Radio Policy would “enable the radio industry to strengthen its overall performance, attract new investment, and compete more effectively with other forms of media.” Further, the Commission stated that it was satisfied that its revised policy on common ownership would “provide for a strengthened radio industry, while responding to longstanding concerns regarding diversity of news voices, media cross-ownership and fair competition.”
10. In Public Notice 1998-41, the Commission raised the matter of its approach to LMAs established in *Commission's approach to dealing with local management agreements in Canadian radio markets*, Public Notice CRTC 1996-138, 16 October 1996 (Public Notice 1996-138). In Public Notice 1996-138, the Commission had stated that it was

satisfied that LMAs were acceptable so long as they did not contravene the Regulations or the general condition of licence which stipulates that, except as authorized by the Commission, each broadcasting undertaking “shall be operated in fact by the licensee itself”, and that no licence can be transferred or assigned.

11. The Commission noted in Public Notice 1998-41 that, with the Commercial Radio Policy in place, “increased consolidation of ownership in a market involving stations that are party to an LMA could raise questions as to whether this would lead to market dominance by one broadcaster to the undue detriment of others in a market, or effectively create a monopoly in a market that would otherwise be competitive under the revised common ownership policy.” Accordingly, the Commission announced that it would undertake a review of its current approach to LMAs.

Review of the Commission’s 1996 approach to LMAs

12. In *Call For Comments on the Continued Appropriateness of the Commission’s Policy Respecting Local Management Agreements Involving Licensees of Radio Broadcasting Undertakings*, Public Notice CRTC 1998-42, 30 April 1998 (Public Notice 1998-42), the Commission described its 1996 approach to LMAs as having been intended to assist radio broadcasters achieve cost savings and acquire greater marketing parity with other media during the period of financial difficulty experienced by the radio industry in the mid-1990s, particularly in smaller markets, where the viability of some stations was under serious threat. It noted that cost savings had normally been realized under LMAs through the integration of several operational functions of one radio station, often involving the technical, sales and promotion and general administrative activities, with those of a radio station operated by another licensee in the same market.
13. The Commission reiterated that an examination of its 1996 approach to LMAs, and its continuing justification, was appropriate, in light of the greater strength that the radio industry was expected to achieve under the revised common ownership policy. The Commission expressed particular concern that, if the holder of more than two radio licences in a market were permitted to enter into an LMA with the licensee of another radio station, this could give these licensees an undue competitive advantage over other radio licensees in that market. Accordingly, the Commission put forward a number of questions for public comment, including questions concerning possible restrictions on the scope and application of LMAs.
14. Following its consideration of the comments received in response to Public Notice 1998-42, in *Call for comments on proposed amendments to the Radio Regulations, 1986 regarding local management agreements*, Public Notice CRTC 1999-55, 31 March 1999, the Commission sought public input regarding a proposal to institute a regulatory mechanism for the evaluation of the appropriateness of any LMA.

The Commission's 1999 LMA Policy

15. In *Local Management Agreements*, Public Notice CRTC 1999-176, 1 November 1999 (Public Notice 1999-176; the 1999 LMA Policy), the Commission announced its policy determinations with respect to LMAs and the adoption of an amendment to the Regulations to give effect to that policy. The amendment, which is contained in section 11.1 of the Regulations, prohibits any licensee from entering into, or operating its station pursuant to, an LMA unless it first obtains Commission approval and a condition of licence authorizing it to do so. Section 11.1 defines an LMA as follows:

“local management agreement” means 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. (the definition of an LMA)
16. In Public Notice 1999-176, the Commission confirmed that it would continue to evaluate LMAs “on a case-by-case basis, taking into consideration all relevant circumstances.” At the same time, the Commission set out what it described as “guiding principles” to assist radio broadcasters in evaluating which alternative business model the Commission would generally consider as being appropriate, and in what the circumstances it might thus authorize an LMA by condition of licence. Specifically, the Commission reminded broadcasters that an LMA cannot constitute a change in the effective control of an undertaking. The Commission added that it would also continue to expect the following:
 - Parties to an LMA must ensure that distinct and separate programming and news services are maintained, and that their management remains under the respective responsibility of each licensee. This includes the program director and the news director, as well as any other related staff assigned to programming and/or news activities; and
 - All assets of the undertakings involved in an LMA must remain in the ownership of each respective licensee.
17. The Commission also indicated that it would “be generally inclined to approve” LMAs that include unprofitable stations, in which the number of stations does not exceed the number that may be commonly owned under the ownership policy, and that are limited to a specific term and represent a temporary alternative business model that will allow the broadcasters involved to improve their performance.
18. The Commission indicated 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 licensees would be required to demonstrate clearly that the participation of radio stations in LMAs 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.”

The 7 June 2004 Public Hearing

19. Prior to the hearing, Newcap wrote to the Commission advising that it had given CJSD six months notice of its intention to terminate the LMA involving their respective Thunder Bay radio stations. At the hearing, these two licensees advised that their plan was to wind up their LMA by the end of May 2005, nine months following the date that the affected licences were then scheduled to expire, and that they had no plans to replace the agreement with a new LSA or any other similar business arrangement. When commenting at the hearing on a possible Commission requirement that the LMA terminate at an earlier date, CJSD indicated that it was unable to assess the impact that this would have on its operations. Newcap argued that the longer period was necessary to allow the parties to make the proper decisions and dismantle the LMA in an orderly fashion.
20. Newcap and Maritime likewise confirmed at the hearing that, in the case of their Charlottetown radio stations, the LMA between them would terminate at the end of August 2004, but that it was their intention to replace that LMA with an LSA. Newcap and Rogers, in respect of their Sudbury radio stations, and Newcap, CHUM and Sun Radio, in respect of their Halifax and Dartmouth radio stations, each advised that they also wished to continue to operate their respective stations under the terms of their existing LSAs.
21. The LSAs that were at issue in this proceeding typically include a provision that names one of the parties as the sole and exclusive advertising sales representative for the group of stations owned by the parties to the agreement and confers upon that sales representative responsibilities for various duties associated with the sale of advertising time and with record keeping. The LSAs generally contain further provisions establishing a formula for the sharing of advertising revenues between the parties. Some guarantee parties a specified portion of the local advertising revenues earned by the group as a whole.

The Commission's analysis and determinations regarding whether LSAs are captured by section 11.1 of the Regulations

22. Much of the discussion at the hearing centred on whether LSAs are captured by the definition of an LMA, and thus oblige a licensee to obtain prior Commission approval of a condition of licence before entering into such an agreement.
23. Also at issue was whether LSAs give rise to the same potential concerns as those that led to the 1999 LMA Policy and to section 11.1 of the Regulations, such as the competitive disadvantage at which an LMA in a given market may place radio licensees in that market who are not party to the agreement, the possibility that an LMA might discourage potential new competitors from seeking entry into a market, and that it might also negatively affect the quality and diversity of programming in a market.

24. The applicants were of the view that LSAs did not fall within the definition of an LMA. Newcap, Rogers and CHUM each contended that LSAs focussed on the sale of local advertising, while the terms of an LMA could possibly extend to include all aspects of a station's operation, with the exception of programming.
25. In its intervention in support of the applicants' position in this matter, the Canadian Association of Broadcasters (CAB) argued that LSAs are similar to the arrangements between broadcasters and national representation houses, agencies that negotiate on behalf of large groups of stations, often including all or several stations within a given market, for the sale of air time on those stations to national advertisers. According to the CAB, it would be inappropriate for the Commission to regulate LSAs between radio stations in a market unless it is proven that such agreements have a negative impact on the ability, either of other stations in the market or of new entrants, to meet their broadcasting obligations.
26. The Commission is of the view, and parties at the hearing agreed, that most of the elements of the definition of an LMA also apply to the LSAs under review in this proceeding. Like LMAs, LSAs are formal or informal arrangements, contracts understandings or agreements; they are between at least two licensees; and they relate to at least two radio stations in the same market.
27. While there was extensive discussion at the hearing as to whether or not LSAs relate directly or indirectly to "any aspect of the management, administration or operations" of the stations involved, in the Commission's view, they do so relate. Not only is the local sales function "an aspect of the operations" of a radio station, but there is also likely to be a direct relationship between local sales and programming.
28. For example, the existence of an LSA could reasonably be expected to have an impact on the programming of stations party to the agreement, in that these stations could be expected to adjust programming or station formats in order to maximize the total advertising revenues earned by the group together, whether or not these adjustments would necessarily improve service to the public, add diversity, or satisfy a specific need in the community. This is particularly likely where a participating station is guaranteed a specified portion of the local advertising revenues earned by the group as a whole, and where its incentive to improve its competitive position relative to others in the market, through improvements to its programming and overall service to the public, is likely to be reduced.

The Commission's conclusions

29. Based on the foregoing, the Commission has concluded that LSAs fall within the definition of an LMA. The Commission has further determined that LSAs give rise to the same potential concerns as other LMAs, and that it will authorize them, by condition of licence, only where clearly warranted by the circumstances. In reaching this latter determination, the Commission has taken into account the current profitable state of the Canadian radio industry, relative to the financial difficulties that confronted the industry

and prompted the Commission to adopt its approach to LMAs in 1996, and that also formed the primary motivation underlying the Commercial Radio Policy introduced by the Commission in 1998.

30. The Commission notes that, in the case of the Sudbury LSA, there are four radio stations that are party to that agreement. This exceeds the number that a single person would generally be permitted to own under the common ownership policy. The Commission notes further that, in their annual returns, the licensees of the Sudbury stations reported positive profit margins, before interest and taxes (PBIT margins), as of 31 August 2003, with the exception of one of the three stations licensed to Rogers. On a consolidated basis, however, Rogers' Sudbury stations did report a positive PBIT margin as of that date.
31. Halifax/Dartmouth presents a similar situation, in that the five stations that are party to the LSA in that market also exceed the total number of stations that a single person would generally be permitted to own under the common ownership policy. Moreover, all of the stations in that market reported positive PBIT margins, as of 31 August 2003.
32. A concern arises, in the case of both Sudbury and Halifax/Dartmouth, about the influence of the current business arrangements between radio licensees in those two markets 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, in both cases, with respect to the potential impact of the LSA noted above on the diversity and quality of programming.
33. In Charlottetown, all three existing stations in the market were parties to the existing LMA and indicated their intentions to operate under the terms of the proposed LSA. This number equates to the permissible number of stations that, under the common ownership policy, could be owned by a single person. All of the stations reported a positive PBIT margin as of 31 August 2003. In addition, in *Call for applications for a broadcasting licence to carry on radio programming undertakings to serve Charlottetown, Prince Edward Island*, Broadcasting Public Notice CRTC 2005-3, 11 January 2005, the Commission noted that it had received an application for a licence to carry on a commercial radio programming undertaking to serve Charlottetown, and invited other interested parties to file such applications. Without prejudging the outcome of any proceeding that might ensue from that call, the Commission considers that it would be in the best interests of diversity and competition, and of fairness to any applicant or applicants that might subsequently be granted a new radio broadcasting licence to serve Charlottetown, that it not approve the proposed LSA.

34. The Commission notes that, in the case of Thunder Bay, the issues are largely moot, given that both Newcap and CJSB have advised the Commission that they intend to terminate their LMA, and have no plans to replace that agreement with an LSA. However, the Thunder Bay licensees had requested at the hearing that they be given until the end of May 2005 to wind up their LMA. The Commission considers this request to be reasonable.
35. In the Commission's view, none of the other applicants at the 7 June 2004 Public Hearing presented a compelling case that their particular circumstances were exceptional or warranted continuation of the LMAs between themselves and other licensees operating stations in the markets they serve, beyond a reasonable period to allow the parties to wind up these business arrangements in an orderly fashion.
36. Accordingly, in today's renewal decisions, the Commission has permitted each licensee, by condition of licence, to continue to operate under any LSA or other LMA it may have entered into with one or more other radio station licensees until no later than 31 May 2005, at which time the agreements must be terminated. The Commission is satisfied that this deadline provides the parties sufficient time to terminate these agreements.
37. The Commission intends to review its 1999 LMA policy in the context of the broader review of its Radio Policy that it will undertake in the near future. In the meantime, and as the Commission has indicated earlier in this notice, the following elements are those that it will continue to examine in considering applications for authority to enter into LMAs:
 - the profitability of the stations involved;
 - the number of stations owned by the parties in the market concerned;
 - the potential impact on competitors;
 - the potential impact on new entry;
 - the possible reduction in the diversity of editorial voices and in the overall diversity and quality of programming; and
 - the potential impact on the ability of radio stations to better compete with other media.

Secretary General

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