



Broadcasting Decision CRTC 2005-24

Ottawa, 31 January 2005

Newcap Inc.

Charlottetown, Prince Edward Island

Application 2003-1492-2

Public Hearing in the National Capital Region

7 June 2004

CHTN Charlottetown – Licence renewal

The Commission renews the broadcasting licence for the radio programming undertaking CHTN Charlottetown, from 1 February 2005 to 31 August 2011.

The application

1. The Commission received an application by Newcap Inc. (Newcap) to renew the broadcasting licence for the radio programming undertaking CHTN Charlottetown, which expires on 31 January 2005.
2. The application raised the issue of the appropriateness of the continuation of a business arrangement, in place or proposed, between Newcap and Maritime Broadcasting System Limited (Maritime), another radio licensee in the Charlottetown market. At the time of the hearing, the licensees were operating under the terms of a local management agreement (LMA), but proposed to terminate that arrangement and replace it with another arrangement described as a local sales agreement (LSA).

Intervention

3. The Commission received one intervention in connection with this application. The Canadian Association of Broadcasters (CAB) 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 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 proposed LMAs, including local sales agreements, between licensees of radio stations serving the same market*, Broadcasting Public Notice CRTC 2005-10 (Public Notice 2005-10), also published today.

The Commission's analysis and determination

4. In 1994, the Commission permitted Newcap and Maritime to enter into an LMA involving CHTN and Maritime's local radio stations CFCY and CHLQ-FM. At that time, both broadcasters were experiencing financial hardship in a difficult Charlottetown market, and considered that their economic viability would be better protected through

the sharing of their facilities and administrative and sales resources. Although Maritime was acting as the manager, the LMA did stipulate that each licensee would be responsible for making, supervising and controlling decisions related to programming, particularly news.

5. In 2001, both licensees asked the Commission for authority to continue to operate under the LMA. Newcap and Maritime considered that, without the agreement, it would be difficult for a stand-alone AM station to maintain profitability in the market, and that significant expenditures would be incurred by Newcap as a result of the termination of the LMA. While the Commission did not agree with the argument that CHTN would be unprofitable without the LMA, it did recognize the expense that Newcap would face in re-establishing its AM station as a separate business. The Commission also considered that both parties would need more time to explore other options. Accordingly, in *Local Management agreement – Charlottetown*, Broadcasting Decision CRTC 2002-181, 8 July 2002, the Commission permitted the licensees to continue to operate under the LMA until 31 August 2003, by condition of licence. This authority was extended in subsequent decisions¹ to 31 January 2005.
6. At the hearing of their current applications for licence renewal, and in a letter dated 30 June 2004 filed following the hearing, Newcap and Maritime confirmed their intention to terminate the LMA by the end of August 2004. Under this scenario, the three radio stations would continue to operate independently, but from shared facilities. They would each retain distinct responsibility for the management of their respective programming and news services, where individual news and program directors would continue to report to individual general managers for each owner. There would be no crossover of voices between the Newcap and Maritime stations. Each owner would employ separate workforces, paid through separate payroll systems, reporting to Canada Customs and Revenue Agency independently. Both licensees would complete independent CRTC annual returns.
7. At the same time, Newcap and Maritime stated that they would continue to cooperate with each other under the terms of a proposed LSA. The LSA proposed by the parties provided that Maritime would be the sole and exclusive advertising sales representative for the Charlottetown stations and that Maritime would, through its local and national sales arrangements, secure local, regional and national radio advertising contracts for these stations. Under the draft LSA, Newcap and Maritime would be responsible to set the rates to be charged to advertisers for airtime on their respective stations and each would be free to refuse to broadcast advertising on them. The draft LSA contained a provision that the management, operation and administration of the stations would remain the sole responsibility of their respective owners. Newcap and Maritime would share revenues according to a set percentage. Finally, under the draft LSA, Maritime would be responsible for reporting and record keeping of the revenues and trade accounts receivable for each station, and for invoicing and collecting all trade accounts receivable.

¹ See *Extension of local management agreement*, Broadcasting Decision CRTC 2003-416, 22 August 2003; *Administrative renewals*, Broadcasting Decision CRTC 2004-290, 23 July 2004; and *Administrative renewals*, Broadcasting Decision CRTC 2004-563, 22 December 2004.

8. 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 proposed between Newcap and Maritime in respect of their Charlottetown radio stations, are LMAs and, as such, require prior Commission approval pursuant to section 11.1 of the Regulations.
9. 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.”
10. As noted in Public Notice 2005-10, there are three Charlottetown radio stations that would operate under the proposed LSA. This falls within the permissible number of stations that, under the common ownership policy, could be owned by a single person. However, all of the stations reported a positive profit margin, before interest and taxes, 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, pursuant to section 11.1 of the Regulations, the proposed LSA, beyond a reasonable period to allow the parties to wind up this business arrangement in an orderly fashion.
11. Accordingly, the Commission authorizes the licensee, by **condition of licence**, to continue to operate its Charlottetown station under the terms of any LMA or LSA that may currently exist between it and Maritime until no later than 31 May 2005, at which time the agreement must be terminated.

Conclusion

12. On the basis of its review of this licence renewal application and of the licensee's past performance, the Commission **renews** the broadcasting licence for the radio programming undertaking CHTN Charlottetown, from 1 February 2005 to 31 August 2011. The licence will be subject to the above condition of licence, as well as to the **conditions** set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999.

Employment equity

13. 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 at the following Internet site: <http://www.crtc.gc.ca>