



## Broadcasting Decision CRTC 2003-171

Ottawa, 3 June 2003

### **Andrew Newman and Andrew Bell, on behalf of a corporation to be incorporated**

St. John's, Newfoundland and Labrador

### **Newfoundland Broadcasting Company Limited**

St. John's, Newfoundland and Labrador

*Applications 2001-0588-4 and 2002-0199-7*

*Public Hearing at St. John's, Newfoundland and Labrador*

*10 December 2002*

### **FM radio station in St. John's**

*The Commission **approves** the application by Andrew Newman and Andrew Bell, on behalf of a corporation to be incorporated, for a broadcasting licence to operate an English-language FM radio station in St. John's, Newfoundland and Labrador. The competing application by Newfoundland Broadcasting Company Limited is **denied**.*

### **The applications**

1. At the 10 December 2002 public hearing, the Commission considered competing applications by Andrew Newman and Andrew Bell, on behalf of a corporation to be incorporated (Newman/Bell) and by Newfoundland Broadcasting Company Limited (NBCL). Each applicant requested a broadcasting licence to operate an English-language FM radio station in St. John's, Newfoundland and Labrador. The applications were not technically mutually exclusive. Newman/Bell proposed to operate at 101.1 MHz (channel 266C) with an effective radiated power (ERP) of 20,000 watts<sup>1</sup>, while NBCL proposed to operate at 95.7 MHz (channel 239C) with an ERP of 100,000 watts. Each applicant, nevertheless, strongly maintained that the St. John's radio market could not support the licensing of two new radio stations at this time.
2. Newman/Bell proposed to operate a commercial FM radio station that would offer an adult contemporary music format targeted to adults aged 24-54 years, with a particular appeal to females within that group. All of the programming broadcast by the station would be locally produced and most of it would be live-to-air.

<sup>1</sup> As indicated in Broadcasting Notice of Public Hearing CRTC 2002-11, 4 October 2002, Newman/Bell originally proposed to operate at an ERP of 100,000 watts. The Department of Industry, however, authorized an ERP of 20,000 watts.

3. The proposed licensee corporation of Newman/Bell would be controlled by two shareholders: Andrew Bell (51%) and Andrew Newman (49%). The applicant stated that Mr. Newman is an experienced broadcaster familiar with the St. John's radio market and that Mr. Bell has many years of business experience in Newfoundland and Labrador, including 11 years of media buying.
4. NBCL proposed to operate a commercial FM radio station that would offer an easy listening/adult contemporary music format targeted to the 18-49 year age group, particularly to female listeners. All of the programming broadcast by the station would be produced locally and would feature Newfoundland and Labrador artists prominently in the music mix. While the applicant planned to offer some live-to-air segments, it intended to make extensive use of voice tracking.
5. NBCL is ultimately controlled by Mr. Geoff W. Stirling of St. John's and is the licensee of radio station CHOZ-FM St. John's and its eight retransmitters located in eastern, north-central and western Newfoundland. NBCL is also the licensee of television station CJON-TV St. John's and its 15 rebroadcasting stations located across the province. CJON-TV is the only source of private television service available over the air in Newfoundland and Labrador. In addition, Mr. Stirling owns *The Newfoundland Herald*, a weekly entertainment newsmagazine.

### **Interventions**

6. The Commission received 14 interventions in support of Newman/Bell's application and one intervention in support of NBCL's application.
7. Newcap Inc. (Newcap), the licensee of commercial radio stations VOXM, VOXM-FM, CKIX-FM and CJYQ St. John's, filed an intervention commenting on both applications. This intervention is discussed later in this decision under the heading "Impact of new entrant, competitive state of the market and diversity of news voices".
8. The Canadian Broadcasting Corporation (CBC) intervened in opposition to NBCL's application. The intervener stated that the applicant's proposal to operate at 95.7 MHz (channel 239C) at St. John's would be in direct conflict with the CBC's *Long Range Radio Plan* that envisaged the use of 95.5 MHz (channel 238B) for a future Radio Two service in Port Rexton, Newfoundland and Labrador.
9. In response, NBCL stated that it was engaged in ongoing discussions with the CBC to resolve the conflict with regard to the proposed use of 95.7 MHz (channel 239C). At the hearing, the applicant confirmed that, if it was unable to reach an agreement with the CBC, it was willing to accept an approval of its application that would be conditional upon finding another frequency.

## Evaluating the applications

10. The Commission has examined the applications in terms of their furtherance of the objectives of the *Broadcasting Act* (the Act), particularly with respect to the production of local and regional programming. It has also assessed them against the objectives set out in the *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998 (the Commercial Radio Policy).
11. In its assessment of applications for new commercial radio stations, the Commission takes into account four main factors or bases of comparison that it has identified as being relevant. While the relative importance of the factors will vary depending on the specific circumstances of the market, these factors are:
  - the impact of a new entrant on existing stations;
  - the competitive state of the market;
  - the diversity of news voices in the market; and
  - the quality of the applications.<sup>2</sup>

### **Impact of a new entrant, competitive state of the market and diversity of news voices**

12. The Commission's predisposition lies clearly in favour of increased competition and diversity, and the improvements in the overall quality of available services that these promote. At the same time, the Commission generally seeks to assure itself that the competitive impact of a new entrant to a radio market will not impinge unduly on the ability of existing stations to meet their programming responsibilities under the Act.
13. The competitive state of a market, as a factor in the Commission's consideration of applications proposing new commercial radio stations, is generally most relevant where an applicant is the licensee of an existing station in that market. The Commission's concern is not only that its licensing actions not create an undue competitive imbalance in the market but also, in such cases, that competition is promoted as much as is possible.
14. The St. John's market is currently served by five local English-language commercial radio stations. As mentioned earlier in this decision, NBCL already operates one of these commercial radio stations and in addition operates the only local private television station and publishes a weekly newsmagazine in that city. Newcap operates the other four commercial radio stations in the market and its parent company, Newfoundland Capital Corporation Limited, publishes a weekly community newspaper.

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<sup>2</sup> These criteria were first set out in *Introductory statement – Licensing new radio stations* which appeared in Decisions CRTC 99-480, 99-481 and 99-482, all dated 28 October 1999.

15. The remaining English-language radio services are all not-for-profit operations, and include CHMR-FM St. John's operated by Memorial University of Newfoundland Radio Society, VOWR St. John's operated by the Wesley United Church Radio Board, VOAR Mount Pearl operated by the Seventh-Day Adventist Church in Newfoundland and Labrador and the CBC's radio services.
16. The CBC also operates television station CBNT St. John's. In addition to the publications noted above, there is a daily newspaper in St. John's as well as various other community publications.
17. In its intervention, Newcap submitted that the licensing of a third commercial radio broadcaster would have a “destabilizing” impact on the market. Newcap was particularly concerned that Newman/Bell intended to offer lower advertising rates and would thus undermine the stability of the St. John's radio market. The intervener, nevertheless, expressed support for NBCL's application, if the Commission determined that the market could support another FM radio station.
18. Newman/Bell responded that it expected that only 2% of its revenues would be derived from the revenues of existing radio stations and that the intervener's argument concerning a threat to the stability of the market was, therefore, not valid. With regard to Newcap's specific concerns regarding the applicant's proposed advertising rates, Newman/Bell, explained that it had established these figures in the spring of 2001 and confirmed that it intended to “sell its product at the highest possible rate.”
19. In its evaluation of these applications, the Commission has taken into consideration the statement made by each applicant that the St. John's market could not support the licensing of more than one new radio station at this time. Furthermore, in assessing the likely impact of licensing either of the proposals on the existing stations, the Commission has examined the market's economic strength.
20. The Commission notes that, in 2001, local and national advertising revenues in St. John's totalled more than \$9.3 million and each of the two existing commercial broadcasters, NBCL and Newcap, generated a positive profit before interest and tax (PBIT). Furthermore, the *Metropolitan Outlook Fall 2002 and Winter 2003 Forecasts* published by the Conference Board of Canada (the Conference Board) indicates that the St. John's economy is experiencing solid economic growth and strong employment gains in several sectors, including commercial services, manufacturing, public administration, finance, insurance and real estate. The Conference Board forecasts that the gross domestic product of this market will grow over the next five years and that retail sales will also increase. The Conference Board also expects the population to grow annually over the next five years.
21. Based on the foregoing evidence concerning the relative strength of the local economy, the Commission considers that the St. John's radio market should experience consistent positive growth in the coming years. Moreover, the Commission notes that all of the existing stations in the market operate in formats other than those proposed by the

applicants. Accordingly, the Commission finds that the introduction of either of the new radio stations proposed by the applicants would not have an undue negative impact on the existing radio stations in the market.

22. Approval of Newman/Bell's application would result in the introduction of a new player in the market and would thus increase the number and diversity of editorial voices and increase the level of competition. Given NBCL's presence in St. John's as the owner of existing radio and television stations as well as a newsmagazine, approval of its application would not add to the diversity of news voices.

#### **Quality of the applications**

23. The Commission uses four main criteria when assessing the quality of applications for new radio stations:
  - commitments to support the development of Canadian talent;
  - Canadian content commitments;
  - the quality of the business plan, including the proposed format; and
  - proposals for local programming and plans for providing reflection of the local community.

#### *Development of Canadian talent*

24. Each of the applicants stated that it would participate in the Canadian talent development plan established by the Canadian Association of Broadcasters (CAB). The plan calls for minimum contributions of \$3,000 in each broadcast year, or \$21,000 over a seven-year licence term, by commercial radio stations serving markets the size of St. John's. The contributions must be made to eligible third parties for the development of Canadian musical and other artistic talent.
25. As a participant in the CAB's plan, Newman/Bell proposed to contribute \$3,000, in each broadcast year, to the Music Industry Association of Newfoundland. NBCL stated that its annual \$3,000 contribution to Canadian talent development would be directed to the Newfoundland and Labrador Music Industry Association and/or the Kiwanis Music Festival.
26. The Commission is satisfied with the commitments made by each of the applicants to support Canadian talent development.

#### *Level of Canadian content*

27. Section 2.2 of the *Radio Regulations, 1986* (the Regulations) requires that, on a weekly basis, a minimum of 35% of all category 2 (popular) musical selections, and a minimum of 10% of all category 3 (special interest) musical selections broadcast by a commercial

radio station be Canadian selections. The Regulations also require a minimum of 35% of all category 2 musical selections broadcast between 6:00 a.m. and 6:00 p.m. on weekdays be Canadian.

28. Newman/Bell and NBCL both made commitments in their applications to adhere to these regulatory requirements, at a minimum.

*Business plan and proposed format*

29. Both applicants submitted that a recent change in the music format of the incumbent radio station, VOCM-FM, from hot adult contemporary to classic rock had created a void in the St. John's market and an opening for another music format, specifically one that would appeal to adult females. Each applicant had commissioned a market study and presented evidence from its respective study demonstrating listener demand for its proposed music format.
30. Newman/Bell's business plan was based on an adult contemporary music format targeted to listeners aged 24-54 years, and directed particularly to females. Since its market study had been conducted before VOCM-FM's format change, the applicant expected that there would be an even greater demand for an adult contemporary format targeted to females than the study had suggested. Furthermore, the applicant argued that VOCM-FM's change in format did not indicate a lack of demand for adult contemporary music because the station had not broadcast musical selections that truly reflected that format.
31. In the station's first and second year of operation, Newman/Bell expected to attract a 17% audience share. It also projected advertising revenues of \$788,000 in year one, increasing by approximately 5% in each subsequent year, to \$1,055,000 in year seven. In support of its projections, the applicant argued that adults aged 29 to 54 years are the largest target market in St. John's and that they are currently underserved by the existing radio stations. It also expected that the recent openings of several large retail chain stores would increase the pool of advertising dollars available in the market.
32. Newman/Bell estimated that its programming expenses would range from \$296,400 in the first year of operation, rising to \$356,750 in the seventh year and would represent about 30% of the station's total revenues. The proposed programming expenses included salaries for the seven full-time and four part-time programming staff. At the hearing, the applicant asserted that its proposed programming expenditures were consistent with those generated by a start-up radio operation and that the salary projections were based on those offered by similar-sized radio stations and adjusted to reflect the St. John's market. The applicant also confirmed that, initially, neither Mr. Newman nor Mr. Bell would draw a salary from the radio station because they intended to rely on income generated from their other business interests.
33. NBCL's business plan was based on an easy listening/adult contemporary music format targeted to listeners aged 18-49 years and directed, in particular, to females. It anticipated that its proposed music format would attract primarily female listeners from the existing radio stations in the market, including its own station, CHOZ-FM. If its application were

approved, NBCL planned to tailor CHOZ-FM's music format to appeal to a predominantly male audience and to focus the programming offered by its new station to appeal mostly to a female audience.

34. NBCL projected an audience share ranging from 6% to 11% over a seven-year licence term. It expected to garner \$772,000 in local and national advertising revenues in its first year of operation, rising by approximately 17% in each subsequent year, to \$2.051 million in the seventh year. While the applicant indicated that the proposed station would benefit from administrative synergies with NBCL's other radio, television and print holdings, it stated that it would not sell its three media as one package to the same advertiser.
35. NBCL's business plan was also predicated on its ability to use the existing infrastructure of its current broadcasting holdings to launch the proposed station and to make extensive use of voice tracking with live assist technology<sup>3</sup> to reduce programming expenses. The applicant planned to draw on the resources of over 40 existing staff currently shared between CHOZ-FM and CJON-TV, including on-air personalities and news staff. It stated that it would need to hire only between four and six new employees and that these new staff members would also be shared with its existing radio and television stations.
36. The Commission notes that Statistics Canada's 2001 Census of Canada counts the population of St. John's central market area as 172,915 and indicates that approximately 55.2% of the population are between the ages of 20 and 54. Furthermore, the Bureau of Broadcast Measurement's (BBM) report for Fall 2002 indicated that there were eight music formats available in St. John's, none of which encompassed an adult contemporary music format. Based on the evidence of the 2001 Census of Canada, the BBM report and the market studies provided by each of the applicants, the Commission concludes that listeners in the St. John's market would benefit from a radio station offering the type of music format proposed by each of the applicants.
37. The Commission considers that both Newman/Bell and NBCL presented viable business plans in terms of market capacity, projected audiences and projected revenues. Each applicant also demonstrated clearly the financial capacity necessary to fulfil its respective business plan.
38. In view of the fact that Newman/Bell proposed to offer a substantial amount of live-to-air programming and to hire eleven programming staff, the Commission, in its evaluation of the application, has examined the proposed programming expenditures in detail. The Commission is satisfied that the projected programming expenditures are adequate to achieve the applicant's programming objectives.

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<sup>3</sup> NBCL explained that live assist technology permits a disk jockey to play pre-recorded spoken word tracks on a delay basis and to broadcast live-to-air, if necessary.

39. With respect to NBCL's application, the Commission acknowledges that the applicant would benefit financially from the efficiencies that would be realized through the sharing of resources with its existing media and through the extensive use of voice-tracking in its programming.

*Local reflection*

40. Each of the applicants stated that all of the programming to be offered by its proposed station would be locally produced.
41. A key element of Newman/Bell's application was its commitment to reflect the needs of the local market by offering a substantial amount of local, live-to-air spoken word and music programming, and broadcasting a minimal amount of automated programming. The applicant submitted that automated programming lacks immediacy and, consequently, diminishes a broadcaster's ability to deliver relevant real-time local programming to its listeners. It claimed that the existing commercial radio stations in St. John's rely heavily on automated programming and contended that its commitment to offer a high level of live-to-air programming would significantly enhance local reflection and diversity in the market.
42. Specifically, Newman/Bell made a commitment to broadcast at least 14 hours of live-to-air programming in each broadcast day and to schedule this programming between 6 a.m. and 8 p.m. In each broadcast week, the station would offer a minimum of 3.5 hours of locally-produced news programming, focusing on local stories and including local sports and weather information. As part of its news programming, the station would broadcast local three-minute newscasts live-to-air on the hour and on the half-hour, each weekday, during the morning and afternoon drive periods. The station would air a 90-second "Feedback" segment twice each weekday, consisting of edited listener responses to a daily topic identified in a "question of the day". It would also broadcast a one-hour community access program, on either Saturday or Sunday, programmed by and targeted to local high school students.
43. In addition, Newman/Bell made a commitment to offer a weekly one-hour live broadcast from a local club featuring local talent as well as musicians from other parts of Newfoundland and Labrador. The applicant stated that it would not air commercial messages during this broadcast and that its annual budget for the initiative would be over and above the other programming expenses detailed in its business plan. In response to questioning at the hearing, Newman/Bell explained that, given the inherent uncertainties involved in securing a long term venue for a live broadcast from a local club, it could not agree to abide by this commitment by condition of licence. The applicant, nevertheless, confirmed that it would carry out the project.
44. For its part, NBCL proposed to offer 19 hours of live-to-air programming in each broadcast week. The live-to-air programming would include 4 hours of news, weather, traffic reporting and other information programming with 5-minute newscasts on the



half-hour during the morning and afternoon drive period on weekdays. During the remaining 107 hours of the broadcast week, the applicant planned to broadcast voice tracking programming using live assist technology.

45. As part of its commitment to local reflection, NBCL stated that it would attempt to devote approximately 17% of all category 2 (popular) music aired in each broadcast week, or almost half of the 35% Canadian content level required by the Regulations, to contemporary music selections performed by Newfoundland and Labrador artists. NBCL also planned to broadcast 6 hours of dedicated Newfoundland and Labrador programming in 3-hour blocks each Saturday and Sunday morning between 6 a.m. and 9 a.m. While this programming would be primarily music-driven, it would also include interviews with artists and other spoken word features.
46. In the Commission's view, each of the applicants provided adequate plans for local programming and local reflection in their applications. Nevertheless, in its assessment of the two applications, the Commission concludes that the implementation of the programming proposals presented by Newman/Bell and, in particular, its commitment to broadcast a substantial amount of live-to-air programming on a daily basis throughout the broadcast day and the broadcast week, will provide the greater contribution to the level of local programming and local reflection available on the radio airwaves in St. John's. In comparison, NBCL proposed to offer a limited amount of live-to-air programming over the broadcast week and to schedule its programming dedicated to showcasing Newfoundland and Labrador talent in the very early morning hours on the weekends, times when there are significantly smaller radio audiences.

### **The Commission's determination**

47. The Commission considers that both applicants have presented proposals for viable radio stations that would increase the range of choice available to listeners in St. John's. However, the licensing of Newman/Bell's proposal would provide a new radio voice in the market and thus add to the diversity of news voices and heighten the level of competition. By way of comparison, approval of NBCL's application would not contribute to the diversity of news voices.
48. For all of the reasons discussed in this decision, the Commission considers that the new FM station proposed by Newman/Bell will contribute to the furtherance of the objectives of the Act, particularly with respect to local and regional reflection, and that it is consistent with the Commission's criteria for evaluating competitive applications for commercial radio stations.
49. In light of the above, the Commission **approves** the application by Newman/Bell for a broadcasting licence to operate an English-language FM radio station in St. John's at 101.1 MHz (channel 266C) with an ERP of 20,000 watts. The competing application by NBCL is **denied**.

50. The Commission strongly expects Newman/Bell to fulfil its commitment to broadcast a minimum of 14 hours of live-to-air programming in each broadcast day and to schedule this programming between 6 a.m. and 8 p.m.

### **Issuance of the licence**

51. The licence will expire on 31 August 2009 and will be subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, including a condition of licence requiring the applicant to make annual contributions to Canadian talent development in accordance with the funding plan formulated by the CAB.
52. 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.
53. The Commission reminds the applicant that, pursuant to section 22(1) of the *Broadcasting 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.
54. 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 (the Direction) requires that 80% of the directors of a licensee corporation be resident Canadians. In its application, Newman/Bell indicated that section 3.02 of its proposed by-laws require that a majority of the directors of the licensee be resident Canadians. At the hearing, Newman/Bell agreed to accept the following wording for section 3.02 of its by-laws:

Except where the Corporation is a non-resident Corporation, 80% of the directors shall be resident Canadians; but where the Corporation has only one or two directors, that director or both directors, as the case may be, shall be a resident Canadian.

55. A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:
- the applicant has revised its by-laws, reflecting changes to the composition of its board of directors as noted above, to comply with the requirements of the Direction;
  - an eligible Canadian corporation has been incorporated in accordance with the application in all material respects; 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 3 June 2005. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this date.

### **Cultural diversity**

56. Section 3(1)(d)(iii) of the Act states, in part, that the Canadian broadcasting system should reflect the "multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples within that society."
57. At the public hearing, the Commission asked Newman/Bell to describe the measures it would take to reflect the cultural diversity of the St. John's market in the operation of the proposed station. In response, the applicant noted that, while St. John's is home to some landed immigrants, the city is not as culturally diverse as other Canadian communities. The applicant, nevertheless, stated that it will strive to serve the cultural groups in St. John's.

### **Employment equity**

58. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

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>*