



Broadcasting Decision CRTC 2006-138

Ottawa, 12 April 2006

Maritime Broadcasting System Limited
Halifax, Nova Scotia

Application 2005-0839-3
Public Hearing in the National Capital Region
16 January 2006

CHNS Halifax – Conversion to FM band

*The Commission **approves** an application by Maritime Broadcasting System Limited for a broadcasting licence to operate a new English-language commercial FM radio station in Halifax to replace its AM station, CHNS.*

The application

1. The Commission received an application by Maritime Broadcasting System Limited (MBS) for a broadcasting licence to operate a new English-language commercial FM radio programming undertaking in Halifax to replace its AM station, CHNS.
2. MBS stated that the proposed station would offer an Adult Contemporary music format and would provide a locally relevant programming service that is community-centred and community-driven. The news, information, other spoken word and specialty programming would directly address concerns and issues in the local community.
3. The station would operate at 89.9 MHz (channel 210C1) with an effective radiated power (ERP) of 100,000 watts.
4. The applicant confirmed that it would continue to participate in the plan developed by the Canadian Association of Broadcasters (the CAB plan) for contributions by radio licensees to Canadian talent development (CTD). Under the CAB Plan, a radio licensee serving a market the size of Halifax would be expected to contribute a minimum of \$5,000 in each broadcast year to eligible third parties for the development of Canadian musical and other artistic talent.
5. In addition to participating in the CAB Plan, the applicant would devote \$35,000 a year (\$245,000 over 7 years), in direct expenditures to support CTD, allocated as follows:
 - \$15,000 a year (\$105,000 over 7 years) to six educational scholarships for students from the four designated groups wishing to pursue their education in radio broadcasting in Nova Scotia. A selection committee would be created, with at least two-thirds of the members having no direct ties to the licensee.

- \$20,000 a year (\$140,000 over 7 years) to the Music Industry Association of Nova Scotia (MIANS). The station would partner with MIANS in the promotion of a Regional Marketing and Business Development Program.

Interventions

6. The Commission received interventions in opposition to the MBS application from CanWest MediaWorks Inc. (CanWest), CHUM Limited (CHUM), HFX Broadcasting Inc., and Rogers Broadcasting Limited (Rogers), all of which are licensees of radio stations authorized to serve the Halifax market.
7. CanWest, CHUM, and Rogers questioned the Commission's decision to proceed with the MBS application without issuing a call for applications. They noted, in particular, that the MBS application did not fall under any of the exceptions set out in *The Issuance of Calls for Radio Applications*, Public Notice CRTC 1999-111, 8 July 1999 (Public Notice 1999-111), and that a call for applications should have been issued.
8. Each of the interveners also expressed concern about the timing of the MBS application. They noted that the Commission had approved applications to operate four new Halifax FM stations in November 2004¹ and submitted that the Commission should allow sufficient time to assess the impact of the newly licensed FM stations prior to licensing additional stations.
9. Further, the interveners noted that the Adult Contemporary format that MBS has proposed for the new FM station is the same format that MBS proposed for a new FM station that was denied by the Commission in November 2004, in favour of other alternatives.

Applicant's reply

10. In reply to the concern that the Commission had not issued a call for applications, MBS noted that Public Notice 1999-111 stated applications "for AM to FM conversions will *generally* result in a call in the affected market" (emphasis added by MBS). MBS submitted that the Commission was not bound by the guidelines set out in Public Notice 1999-111 and that it was not necessary to apply them in all cases.
11. MBS further submitted that approval of its application to convert CHNS to the FM band would not increase the number of stations licensed to serve Halifax and would therefore not significantly impact existing or new radio services in the marketplace. MBS further argued that it was necessary to convert CHNS to the FM band in order for it to compete in an unbalanced market with CHUM and Newcap Inc. (Newcap). CHUM is the licensee of CJCH, CIOO-FM and 50% of CIEZ-FM. Newcap is the licensee of CFDR, CFRQ-FM and 50% of CIEZ-FM. MBS also argued that it was necessary to convert CHNS to the

¹ See *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, 26 November 2004.

FM band given that its application for a second FM station, which would have supported CHNS, was denied in November 2004. As well, MBS submitted that the conversion of CHNS to the FM band would strengthen MBS in the face of a new regional competitor, Rogers, whose applications to operate new News/Talk FM stations in Halifax, Moncton and Saint John were approved in November 2004.

12. MBS also submitted that the proposed Adult Contemporary format does not duplicate that of any of the services either in the market presently, or that of any of the new entrants.

Commission's analysis and determination

13. With respect to the Commission's decision not to issue a call for other applications, the Commission has considered the interventions as well as the applicant's reply and determined that it was appropriate to proceed with consideration of this application without such a call. The Commission notes that approval of MBS' application would not increase the number of radio stations in the market, thus reducing the potential negative effect on incumbent stations in the market. The Commission further notes that 11 applications for new radio stations to serve Halifax were considered in March 2004. It approved four such applications in November 2004, not all of which have commenced operations. The Commission is therefore of the view that it is too early to begin a process that could lead to an increase in the number of commercial radio stations serving the Halifax market.
14. With respect to concerns about the implications of approving the application for other stations serving the Halifax market, the Commission notes that the preliminary results for 2005 indicate that the incumbent Halifax radio stations enjoyed a combined profit before interest and tax (PBIT) margin of 34.21%, which was higher than the average PBIT for all radio stations in Canada of 20.94%, and for all radio stations in Atlantic Canada of 27.27% in 2005. The Commission considers the market is profitable enough to ensure that the conversion of CHNS to the FM band will not have an undue negative impact on radio stations serving the market.
15. The Commission further considers that approval of the application would allow MBS to compete with other Halifax radio licensees on a more equitable basis, and that the format proposed by the applicant would not be directly competitive with that of any radio stations currently serving the market, or approved in November 2004.
16. Accordingly, the Commission **approves** the application by Maritime Broadcasting System Limited for a broadcasting licence to operate a new English-language commercial FM radio programming undertaking in Halifax to replace its AM station, CHNS. The station will operate at 89.9 MHz (channel 210C1) with an effective radiated power of 100,000 watts.

17. The Commission notes that the MBS application was technically mutually exclusive with an application submitted by Coopérative Radio-Halifax-Métro Limitée (the Coopérative) for a broadcasting licence to operate a French-language Type A community FM radio programming undertaking in Halifax at 89.7 MHz. The Department of Industry (the Department) has identified 89.9 MHz as the last Class C1 channel available to the Halifax market. The Commission considers that MBS will maximize the use of frequency 89.9 MHz.
18. In *Community Radio Station in Halifax*, Broadcasting Decision CRTC 2006-139 of today's date (Decision 2006-139), the Commission has approved in part the application by the Coopérative, subject to the applicant submitting, within 90 days of the date of the decision, an amendment to its application proposing the use of a frequency other than 89.7 MHz (channel 209B1) that is acceptable to both the Commission and the Department. In Decision 2006-139, the Commission has noted that the Coopérative would target a specific audience and that the Coopérative stated that it would be prepared to use another frequency.
19. The licence for MBS will expire 31 August 2012 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, as well as to the **conditions** set out in the appendix to this decision.
20. In accordance with its commitments, the Commission expects the applicant to contribute a total of \$245,000 to CTD, in addition to the amounts required as a participant in the CAB plan, over a period of seven consecutive broadcast years. The Commission notes that, as part of its CTD commitments, MBS proposed to devote \$15,000 a year (\$105,000 over 7 years) to six educational scholarships for students from the four designated groups wishing to pursue their education in radio broadcasting in Nova Scotia. The Commission reminds the applicant that, as provided in *Contributions by radio stations to Canadian talent development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995, scholarships qualify as CTD expenditures only when they support students engaged in music, journalism or other artistic studies.
21. The licensee is authorized, by **condition of licence**, to simulcast the programming of the new FM station on CHNS for a transition period of three months following the commencement of operations of the FM station. Pursuant to sections 9(1)(e) and 24(1) of the *Broadcasting Act* (the Act), and consistent with the applicant's request, the Commission **revokes** the licence for CHNS effective at the end of the simulcast period.

Issuance of the licence

22. 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.

23. The Commission reminds the applicant 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.
24. Furthermore, the licence for this undertaking will 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 12 April 2008. 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.

Employment equity

25. 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 in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2006-138

Conditions of licence

1. The licence is subject to the conditions set out in *New licence form for commercial radio station*, 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, upon commencement of operations, devote \$35,000 a year, in direct expenditures to support Canadian talent development, allocated as follows:
 - \$20,000 a year to the Music Industry Association of Nova Scotia; and
 - \$15,000 a year to additional Canadian talent development initiatives to eligible third parties as defined in *Contributions by radio stations to Canadian talent development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995.