Broadcasting Decision CRTC 2008-326

Ottawa, 24 November 2008

Newcap Inc.
Sudbury, Ontario
Applications 2008-0858-7 and 2008-0857-9, received 17 June 2008

Rogers Broadcasting Limited
Dartmouth, Nova Scotia
Applications 2008-0856-1 and 2008-0855-3, received 17 June 2008

Public Hearing in Cambridge, Ontario
20 October 2008

Exchange of radio assets between Newcap Inc. and Rogers Broadcasting Limited and conversion of CIGM Sudbury and CFDR Dartmouth to the FM band

*The Commission **approves** the applications by Newcap Inc. (Newcap) and Rogers Broadcasting Limited (Rogers) for authority to exchange the assets of CIGM Sudbury, Ontario and CFDR Dartmouth, Nova Scotia and for broadcasting licences to continue the operation of the undertakings.*

*The Commission also **approves** the application by Newcap for a broadcasting licence to operate a new English-language FM station in Sudbury to replace AM station CIGM.*

*In addition, the Commission **approves** the application by Rogers for a broadcasting licence to operate a new English-language FM station in Dartmouth to replace AM station CFDR.*

The applications

1. The Commission received applications by Newcap Inc. (Newcap) and Rogers Broadcasting Limited (Rogers) for authority to exchange the assets of two radio programming undertakings: CIGM Sudbury, Ontario and CFDR Dartmouth, Nova Scotia. In separate applications, Newcap requested a broadcasting licence to operate a new English-language FM station in Sudbury to replace AM station CIGM. Rogers requested a broadcasting licence to operate a new English-language FM radio station in Dartmouth to replace AM station CFDR. The Commission received interventions in support of these applications.

2. Newcap, a corporation controlled by Mr. Harold R. Steele, is the current licensee of CFDR Dartmouth. Rogers, a corporation controlled by Mr. Edward S. Rogers, is the current licensee of CIGM Sudbury.

Commission’s analysis and determinations

3. The Commission has examined the application and has identified the following three issues to be addressed in its determinations:

- the assessment of the value of the transactions;
- the assessment of the proposed tangible benefits packages; and
- the assessment of Canadian content development commitments.

Assessment of the value of the transactions

4. Because the Commission does not solicit competing applications for authority to transfer the ownership and control of radio, television and other programming undertakings, the onus is on the applicant to demonstrate that the tangible benefits proposed under the application are adequate and that the proposed value of the transaction is acceptable and reasonable. The Commission generally expects applicants to make commitments to tangible benefits representing a financial contribution of 6% of the value of the transaction for radio undertakings.

Value of the transactions for CIGM and CFDR

5. Pursuant to a Letter of Intent between Newcap and Rogers, Newcap will purchase the assets of CIGM in exchange for the assets of CFDR. Newcap and Rogers agreed that the value to be attributed to CIGM’s assets would be $2 million and the value to be attributed to CFDR’s assets would be $7 million. Neither party would be assuming contracts or liabilities from the other party.

6. Since the purchase price will be satisfied in part by the exchange of assets, the applicants commissioned a valuation report by DMCT Transaction Services Inc. (DMCT) as a basis for determining the fair market value of the stations. DMCT used the discounted cash flow (DCF) method to value each station. This method uses a rate of return known as the discount rate to determine the present value of the cash flows that each station is projected to generate. Assuming that each station will be converted to FM, DMCT used a single discount rate of 12% for each transaction.

7. DMCT also used a market participant approach to assist in determining the value of each station. The market participant approach determines a general value of a station within its particular market without consideration for the circumstances of the specific purchaser. This approach differs from the Commission’s practice, which takes such circumstances into account.

8. The Commission has reviewed the valuation of each transaction based on its specific circumstances and has made adjustments to the valuation of each station as discussed below.

Newcap’s acquisition of CIGM Sudbury

9. With respect to CIGM Sudbury, the Commission’s first adjustment relates to the “power ratio” that Newcap has used to formulate the revenue projections used in arriving at its valuation of CIGM on the FM band. A power ratio is the ratio of a station’s market revenue share (%) to its audience share (%) and is used in the broadcasting industry to determine a station’s projected revenues based on its projected audience share.

10. Newcap projected that, operating on the FM frequency and continuing with its Country format, CIGM’s audience share would more than double from 8.2% to 19.5% over the seven-year projection period. Newcap maintained however that revenue shares from Country FM radio stations dramatically under perform their audience shares. Because of this, Newcap chose power ratios of 0.8 and 0.7 as the basis for determining CIGM’s future market revenue share, which it projected would only increase from 12% to 14% over the projection period.

11. In this regard, the Commission notes that, with a Country format on the AM band in each of 2006 and 2007, CIGM captured market revenue shares of 13% and 11.7% respectively with an audience share of only 8.2%. This represents a power ratio of approximately 1.4, which is significantly higher than the 0.8 and 0.7 power ratios that Newcap used to project its market shares on the FM band. The Commission considers it reasonable then that, with the change to the FM band and the increased audience share that Newcap has projected, CIGM should attract a market revenue share that is more in line with its audience share on the AM band in prior years.

12. In light of these observations and in the absence of evidence from Newcap to support its lower projected market revenue share, it is the Commission’s view that the resulting value of CIGM should in fact be higher than the $2 million proposed. Using CIGM’s historical power ratio of 1.4 and Newcap’s projected audience share, the value of CIGM resulting from the increased market revenue share would amount to $5,480,000 for CIGM. The Commission is of the view that it is appropriate to adjust the value of the transaction to reflect this increase.

13. The Commission’s second adjustment relates to the discount rate that Newcap used to determine the present value of the future cash flows used in determining the value of the transaction for CIGM. Discount rates may include discretionary risk premiums that reflect risks specific to an undertaking and/or its purchaser. Newcap provided a discount rate calculation that included a specific risk premium of 5.25%. Newcap submitted that the risk premium should be included in the discount rate calculation because CIGM has not yet yielded significant returns and, based on the market participant approach, equity financing would be required because a market participant could not finance the transaction solely through debt financing.

14. With respect to Newcap’s assertion about CIGM’s returns, the Commission notes that the valuation should be based on future results, as opposed to historical ones. Although CIGM’s past EBITDA margins on the AM band were generally lower than the average for AM stations in Canada, CIGM’s EBITDA margins with the change to the FM band

are projected to increase to 27% in year one, to 29% in year two and to 30% per year thereafter. These projected margins are consistent with the historical averages for FM stations in Canada. Consequently, the Commission does not accept that CIGM's past low returns justify an inclusion of the proposed specific risk premium in this case.

15. With respect to Newcap's assertion regarding the possible requirement for debt financing, the Commission notes that Newcap's submission is based on the market participant approach without consideration of the particular circumstances of this transaction. Given that CIGM would be financed as one entity within the large group of Newcap radio stations, the Commission considers that the potential difficulties in financing the transaction raised by Newcap also do not justify the inclusion of the proposed specific risk premium.

16. In light of the above, the Commission considers that the 5.25% risk premium proposed by Newcap should not be included in the discount rate for purposes of valuing the transaction. Excluding the 5.25% specific risk premium, the discount rate for valuing CIGM is 9%. Using a 9% discount rate and taking into account the adjustment to the power ratio for the market revenue share discussed above, the Commission determines that the revised value of CIGM is $6,532,000.

Rogers' acquisition of CFDR Halifax

17. Using the methodology and rationale above, including a discount rate exclusive of the 5.25% risk premium and adjusting the projected FM audience share for CFDR to what it captured historically on the AM band, the Commission determines that the revised value of CFDR is $9,582,000.

Assessment of the proposed tangible benefits

18. Consistent with the Commission's tangible benefits policy outlined in Broadcasting Public Notice 2006-158 (the Commercial Radio Policy), the applicants proposed the following tangible benefits packages.

19. For CIGM, Newcap proposed a tangible benefits package equal to 6% of the proposed $2 million value of the transaction ($120,000) to be allocated as follows over seven broadcast years:

- 3% to the Radio Starmaker Fund;
- 2% to FACTOR; and
- 1% to the Sudbury School Board.

20. For CFDR, Rogers proposed a tangible benefits package equal to 6% of the proposed $7 million value of the transaction ($420,000) to be allocated as follows over seven broadcast years:

- 3% to the Radio Starmaker Fund;
- 2% to FACTOR; and
- 1% to Music Nova Scotia.

21. Considering the revised values of CIGM and CFDR, respectively, the value of the proposed tangible benefits package for CIGM will increase from the proposed $120,000 to $391,920, i.e. 6% of the revised amount of $6.532 million, and for CFDR from the proposed $420,000 to $574,920, i.e. 6% of the revised amount of $9.582 million. Given the revised tangible benefits packages, the Commission directs Newcap and Rogers to allocate the additional tangible benefit expenditures over seven broadcast years in the same proportion as proposed in the applications.

Assessment of the Canadian content development commitments

22. The Commission reminds the applicants that they must adhere to the requirements relating to contributions to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time. Newcap indicated that, in addition to the required basic annual contribution, it will, by condition of licence, make an additional annual contribution of $42,857 to CCD. Newcap's additional contribution will total $300,000 over seven consecutive broadcast years. Rogers indicated that, in addition to the required basic annual contribution, it will, by condition of licence, make an additional annual contribution of $40,000 to CCD. Rogers' additional contribution will total $280,000 over seven consecutive broadcast years.

Other commitments

23. The Commission reminds Newcap that it must fulfil all of the commitments to benefits described in *Rogers acquires the assets of radio stations and a radio network in Ontario*, Broadcasting Decision CRTC 2002-92, 19 April 2002, in which the Commission approved the applications by Rogers to acquire the assets of CIGM, CJMX-FM and CJRQ-FM Sudbury from Standard Radio Inc.

Conclusion

24. The Commission **approves** the applications by Newcap Inc. and Rogers Broadcasting Limited for authority to exchange the assets of CIGM Sudbury and CFDR Dartmouth for broadcasting licences to continue the operation of the undertakings.

25. The Commission also **approves** the application by Newcap Inc. for a broadcasting licence to operate a new English-language FM radio programming undertaking in Sudbury to replace AM station CIGM.

26. In addition, the Commission **approves** the application by Rogers Broadcasting Limited for a broadcasting licence to operate a new English-language FM radio programming undertaking in Dartmouth, Nova Scotia to replace AM station CFDR.

27. Upon surrender of the current licences, the Commission will issue a new broadcasting licence to Newcap to operate CIGM on the FM band and a new broadcasting licence to Rogers to operate CFDR on the FM band. The terms and **conditions of licence** for each station are set out in Appendices 1 and 2, respectively. The implementation of each undertaking is subject to the notification by the Department of Industry, discussed in the appendices to this decision.

28. As set out in Appendix 1 to this decision, Newcap is authorized to simulcast the programming of the new FM station on CIGM 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 CIGM effective at the end of the simulcast period.

29. As set out in Appendix 2 to this decision, Rogers is authorized to simulcast the programming of the new FM station on CFDR 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 Act, and consistent with the applicant's request, the Commission **revokes** the licence for CFDR effective at the end of the simulcast period.

Employment equity

30. Because Newcap and Rogers are each subject to the *Employment Equity Act* and file reports concerning employment equity with the department of Human Resources and Social Development Canada, their employment equity practices are not examined by the Commission.

Secretary General

This decision and the appropriate appendix are to be appended to each 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 1 to Broadcasting Decision CRTC 2008-326

Newcap Inc.
Applications 2008-0858-7 and 2008-0857-9, received 17 June 2008

Terms and conditions of licence

Issuance of the broadcasting licence to operate an English-language FM radio programming undertaking in Sudbury, Ontario

Terms

The licence will expire 31 August 2011.

The station will operate at 93.5 MHz (channel 228C1) with an effective radiated power of 100,000 watts.

The Commission reminds the applicant that pursuant to section 22(1) of the *Broadcasting Act*, this authority will only be effective when the Department of Industry (the Department) notifies the Commission that its technical requirements have been met and that a broadcasting certificate will be issued. Therefore, in the absence of the notification by the Department, the applicant will not be able to implement the new undertaking approved in this decision.

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 24 November 2010. 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.

Conditions of licence

1. The licence will be subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, with the exceptions of conditions of licence 1 and 5.

2. If the licensee originates 42 or more hours of programming in any broadcast week, the licensee shall adhere to the Canadian Association of Broadcasters' *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

3. The licensee is authorized to simulcast the programming of the new FM station on CIGM for a transition period of three months following the commencement of operations of the FM station.

4. In addition to the required basic annual Canadian content development (CCD) contribution set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time, the licensee shall, upon commencement of operations, contribute $300,000 over seven consecutive broadcast years to the promotion and development of Canadian content, according to the following schedule: years 1 through 7: $42,857 annually.

   Of this amount, the licensee shall allocate no less than 20% per broadcast year to FACTOR or MUSICACTION. The remaining amounts of this additional CCD contribution shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.

Appendix 2 to Broadcasting Decision CRTC 2008-326

Rogers Broadcasting Limited
Applications 2008-0856-1 and 2008-0855-3, received 17 June 2008

Terms and conditions of licence

Issuance of the broadcasting licence to operate an English-language FM radio programming undertaking in Dartmouth, Nova Scotia

Terms

The licence will expire 31 August 2011.

The station will operate at 92.9 MHz (channel 225C1) with an average effective radiated power of 63,000 watts.

The Commission reminds the applicant that pursuant to section 22(1) of the *Broadcasting Act*, this authority will only be effective when the Department of Industry (the Department) notifies the Commission that its technical requirements have been met and that a broadcasting certificate will be issued. Therefore, in the absence of the notification by the Department, the applicant will not be able to implement the new undertaking approved in this decision.

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3. The licensee is authorized to simulcast the programming of the new FM station on CFDR for a transition period of three months following the commencement of operations of the FM station.

4. In addition to the required basic annual Canadian content development (CCD) contribution set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time, the licensee shall, upon commencement of operations, contribute $280,000 over seven consecutive broadcast years to the promotion and development of Canadian content according to the following schedule: years 1 through 7: $40,000 annually.

   Of this amount, the licensee shall allocate no less than 20% per broadcast year to FACTOR or MUSICACTION. The remaining amounts of this additional CCD contribution shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006.