



## Broadcasting Decision CRTC 2005-192

Ottawa, 10 May 2005

### **Newcap Inc.**

Thunder Bay, Ontario

*Application 2004-0730-6*

*Public Hearing in the National Capital Region*

*5 November 2004*

### **CJUK-FM Thunder Bay – Acquisition of assets**

*The Commission **approves** the application by Newcap Inc. to acquire the assets of radio station CJUK-FM Thunder Bay.*

#### **The application**

1. The Commission received an application by Newcap Inc. (Newcap) for authority to acquire the assets of the English-language commercial FM radio programming undertaking CJUK-FM Thunder Bay from Big Pond Communications 2000 Inc. (Big Pond). Newcap also requested a broadcasting licence to continue the operation of CJUK-FM under the same terms and conditions as those in effect under *New FM radio station*, Decision CRTC 2000-740, 29 November 2000 (Decision 2000-740).
2. Newcap is a wholly-owned subsidiary of Newfoundland Capital Corporation Limited, a corporation under the ultimate control of Harold R. Steele.
3. The applicant proposed a package of tangible benefits related to this transaction, representing 6% of the value of the \$2,300,000 transaction. The total benefits package of \$138,000, to be expended during the current licence term, consists of \$69,000 to be spent on the Radio Starmaker Fund, \$46,000 to be directed to the Foundation to Assist Canadian Talent on Record (FACTOR), and \$23,000 to be expended on the Magic Music Awards, a concert and awards show in recognition of Thunder Bay's local musicians.

#### **Interventions**

4. The Commission received a number of interventions in connection with this application, including form letters in support. Interventions in opposition were submitted by C.J.S.D. Incorporated (CJSD), licensee of CKPR and CJSD-FM Thunder Bay, W.D. Ross and Trevor Scott Stoyko.
5. CJSD expressed the opinion that the proposed acquisition of CJUK-FM by Newcap raises concerns with regard to licence trafficking and the integrity of the licensing process, and that, if it were approved, would result in a loss of local radio service.

6. W.D. Ross and Mr. Stoyko expressed concerns related to the potential loss of private news media and of jobs in the broadcast industry, were the application approved.

#### **The applicant's replies**

7. In reply to the concerns expressed by CJSD, the applicant denied that the proposed acquisition represents licence trafficking. Newcap stated that CJUK-FM was founded with minimal investment and significant debt, by shareholders with little experience in broadcasting. The applicant indicated that, by the end of 2003, CJUK-FM had an accumulated operating deficit of more than \$100,000. The modest success of the station was accomplished by the president and general manager taking very small salaries and by forgoing the interest on shareholders' loans. Newcap stated that there were no windfall profits for the shareholders of Big Pond in this transaction.
8. With respect to CJSD's concern for the integrity of the licensing process, Newcap stated that approval of the transaction would not provide a precedent for similar applications because the circumstances of this application are unique. The applicant was of the view that this proposal represents a way to rescue a radio service which serves a substantial audience in Thunder Bay.
9. In regard to the intervener's suggestion that the market would suffer a loss of local expression if this application were approved, Newcap stated that, by uniting CJUK-FM's operations with the existing Newcap station CJLB-FM, Newcap will be able to provide a more credible news service to Thunder Bay. Newcap indicated that a stronger news room would provide a viable alternative to the unified voice of CJSD's operations, which include CKPR and CJSD-FM, as well as local television stations CKPR-TV and CHFD-TV.
10. The applicant did not reply to the interventions submitted by W.D. Ross and Mr. Stoyko.

#### **The Commission's analysis - Potential for licence trafficking**

11. The Commission notes that radio broadcasting involves the use of public frequencies. Licences to operate such undertakings are obtained following a public process. Those with broadcasting licences should use them first and foremost to provide service to the public. Such licences should not be acquired primarily for investment purposes. The Commission is therefore concerned when parties obtain a licence to operate a broadcasting undertaking and sell such an undertaking shortly thereafter. In this context, the Commission will wish to examine the integrity of the licensing process as well as the extent of profit that would result from the transaction.
12. In the case of CJUK-FM, the proposed transaction involves the acquisition of a broadcasting undertaking that was licensed in 2000 under Decision 2000-740, as a low-power English-language commercial FM radio station at Thunder Bay, with an effective radiated power of 37 watts. The Commission notes that CJUK-FM began operations in September 2001.

13. Given the relatively short period of time between the granting of Big Pond's original licence for CJUK-FM and the proposed sale to Newcap, the Commission examined the circumstances of the sale and the extent of the financial gain associated with the transaction.

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

14. The Commission acknowledges the concerns of interveners regarding the very brief period of time that elapsed between the licensing of CJUK-FM and the conclusion of the sale of the station. After the public hearing, the Commission required further information to be provided by the purchaser and by the vendor, to address matters discussed at the hearing. The applicant committed to file detailed financial data consisting of an estimated distribution of proceeds from the sale, a compensation agreement (salaries), seven years of financial projections for CJUK-FM, and a detailed breakdown of costs (i.e. advertising and promotion, line of credit, deferred interest on loans to shareholders, opportunity costs, competitive salaries and start-up).
15. The Commission has conducted an in-depth investigation of the additional information provided. It has carefully examined all elements of this proposal, including Big Pond's rationale for the sale of the station and finds that in the circumstances, it is unreasonable to infer that the primary motivation of Big Pond's owner in selling CJUK-FM was to make a significant financial gain. Furthermore, the Commission concludes that any financial gain that would accrue to Big Pond as a result of this transaction would not be unreasonable.
16. The Commission has also taken into consideration the views of the applicant and of the interveners on all other aspects of the transaction. The Commission notes that approval of this application would result in the maintenance of the operation of CJUK-FM which would continue to serve local communities. Approval would also allow the tangible benefits listed above to be directed to broadcasting initiatives. Furthermore, given the termination of the Local Management Agreement between Newcap and CJSD, the combination of CJUK-FM and CJLB-FM would maintain competition in the Thunder Bay market.
17. Accordingly, the Commission **approves** the application by Newcap Inc. for authority to acquire the assets of the radio programming undertaking CJUK-FM Thunder Bay from Big Pond Communications 2000 Inc., and for a licence to continue the operation of CJUK-FM.
18. Although the Commission is of the view that this particular transaction constitutes an appropriate sale of broadcasting assets, it remains very much concerned by the increasing incidence of business dealings involving the sale of new or recently-licensed broadcasting properties such as CJUK-FM. The Commission reiterates that the sale of any broadcasting undertaking shortly after commencing operation, for the purpose of

making an unreasonable gain, will be subject to careful examination. The Commission will therefore continue to review and rule on all such transactions on a case-by-case basis, with a view to making certain that the integrity of the licensing process is maintained.

### **Issuance of the licence**

19. The Commission will issue a licence to Newcap, once the current licence issued to Big Pond has been surrendered to the Commission.
20. The licence will expire 31 August 2007, the current expiry date, and will be subject to the **conditions of licence** set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, with the exception of condition of licence number 5. The licence will also be subject to the following condition, which also applies to the current licence:
  - The licensee shall devote a minimum of \$4,000 per year in direct expenditures to support the development of Canadian talent.

### **Employment equity**

21. 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>*