



Broadcasting Decision CRTC 2005-248

Ottawa, 16 June 2005

CHUM Limited, on behalf of a corporation or a partnership to be established

Across Canada

Application 2004-0133-1

Public Hearing in the National Capital Region

1 November 2004

Terrestrial subscription radio undertaking

*The Commission **approves** an application by CHUM Limited on behalf of a corporation or a partnership to be established (CHUM/Astral), for a broadcasting licence to operate a terrestrial subscription radio undertaking. The undertaking will provide 50 radio programming channels, all produced in Canada. A minimum of 20% of the channels will be in the French language.*

The applicant indicated that transmission facilities for the service would initially be built in Montréal, Québec; Toronto, Ottawa and Hamilton, Ontario; and Vancouver, British Columbia, and that facilities would be erected in additional communities as the licence term progressed.

*The CHUM/Astral application was one of three applications for subscription radio undertakings considered at the 1 November 2004 public hearing. The Commission's general approach to these applications is set out in Introduction to Broadcasting Decisions CRTC 2005-246 to 2005-248: Licensing of new satellite and terrestrial subscription radio undertakings, *Broadcasting Public Notice CRTC 2005-61, of today's date.**

The application

1. The Commission received an application by CHUM Limited, on behalf of a corporation or a partnership to be established (CHUM/Astral), for a broadcasting licence to operate a terrestrial subscription radio undertaking. Pursuant to the terms of a Memorandum of Understanding (MOU) entered into with Astral Media Radio inc. (Astral) filed on 15 September 2004, CHUM will hold an 80.1% interest in CHUM/Astral and the remaining 19.9% will be held by Astral. Under the terms of the MOU, Astral has the right to increase its position in CHUM/Astral to 50%.¹

¹ The Commission notes that the Commission's prior approval would be required in the event Astral were to decide to exercise its option to increase its ownership position in CHUM/Astral.

2. The undertaking would initially provide 50 radio channels, all produced in Canada, which would be available to subscribers at a monthly rate of \$9.95. Ten (20%) of the channels would be in the French language. The applicant stated that all of the channels would be Canadian-produced and would generally fulfil requirements for Canadian musical selections and French-language vocal musical selections comparable to those that apply to conventional radio stations. The applicant further proposed to increase the number of channels offered from 50 to 100 in the fourth year of operation.
3. The applicant stated that the channels offered by the undertaking would be delivered using over-the-air transmitters, most of which would broadcast in the L-Band, which is the spectrum currently used for digital audio broadcasting (DAB). However, some of the channels would be transmitted in the 5 MHz of spectrum that is adjacent to the L-Band, which is currently allocated to certain non-broadcasting services. Subscribers would access the service using specially-designed receivers that would be available for a subsidized price of less than \$100. CHUM/Astral envisaged a \$50.00 receiver subsidy in the launch phase of the service, falling to \$25.00 when the volume of receiver sales begins to rise. At the hearing, a British company, Radioscape, stated that, in its view, an affordable receiver with a conditional access capability could be brought to the Canadian market within six to twelve months. The receivers would also be capable of receiving free over-the-air DAB service. The applicant stated that it would work closely with local broadcasters to help advance the launch of conventional over-the-air DAB services where they do not exist so that the launch of such services could coincide with the launch of the CHUM/Astral service.
4. CHUM/Astral indicated that, during the first phase of the roll-out of the service, transmission facilities for single frequency networks would be built in five cities: Montréal (Quebec), Ottawa, Toronto and Hamilton (Ontario) and Vancouver (British Columbia). As the licence term progressed, additional transmission facilities would be constructed to serve other areas, including St. John's (Newfoundland and Labrador), Charlottetown (Prince Edward Island), Halifax (Nova Scotia), Saint John (New Brunswick), Gatineau, Québec, Sherbrooke and Trois-Rivières (Quebec), Kingston, Kitchener and Guelph, London, Windsor, Oshawa, Barrie and St. Catharines/Niagara (Ontario), Winnipeg (Manitoba), Saskatoon and Regina (Saskatchewan), Calgary and Edmonton, later expanded to include Red Deer and communities between Calgary and Edmonton (Alberta), and Victoria and the Fraser Valley (British Columbia). The applicant indicated that if the Commission were to issue a licence to CHUM/Astral and one of the applicants for a satellite subscription radio undertaking under equitable terms and conditions, it would establish enough transmitters so that the programming provided by the undertaking would be available to 60% of the Canadian population by the end of the licence term. The number of transmitters would be increased so that 75% of the population would be reached by the end of the first licence term if the Commission were to decide to licence CHUM/Astral as the sole provider of subscription radio service. This additional 15% would be accomplished by adding transmitters in some 50 smaller communities across Canada. In addition, the applicant stated that it would try to accelerate the implementation of service in certain Quebec communities, including Québec, Sherbrooke, Trois-Rivières, and Gatineau.

5. The CHUM/Astral application was one of three applications for subscription radio undertakings considered at the 1 November 2004 public hearing. The Commission's general approach to these applications including a licensing framework for satellite subscription radio undertakings, is set out in *Introduction to Broadcasting Decisions CRTC 2005-246 to 2005-248: Licensing of new satellite and terrestrial subscription radio undertakings*, Broadcasting Public Notice CRTC 2005-61, of today's date (Public Notice 2005-61).

Interventions

6. The Commission received more than 60 interventions supporting and commenting on this application. Interventions addressing policy issues associated with the licensing of subscription radio undertakings are discussed in Public Notice 2005-61, and interventions raising issues particular to the CHUM/Astral application are discussed in the relevant sections of this decision.

The Commission's analysis and determinations

Number of Canadian-produced channels

7. CHUM/Astral proposed to launch the undertaking with 50 channels, all of which would be Canadian-produced. Ten of the channels would be French-language channels, and the undertaking would also offer five other channels, one each for the Aboriginal, Chinese, German, Italian, and South Asian communities. The undertaking would provide several radio channels in a variety of music formats, including hit oriented, adult contemporary and oldies, urban, rock, alternative rock, country, classical, jazz and blues, dance, as well as channels featuring independent music, new music, ambient music and sounds, children's music and comedy. The applicant further indicated that no more than 10% of the programming broadcast on any of the English- or French-language channels would consist of programming that was originally broadcast on over-the-air radio stations. A **condition of licence** to this effect is set out in the appendix to this decision.
8. The applicant indicated, however, that more of the programming on channels in languages other than English or French could come from existing radio licensees. The applicant considered that this would allow listeners that reside outside the markets that these stations now serve to have access to their programming.
9. The applicant further indicated that it would rebroadcast the audio portion of some specialty television services. The Commission expects the licensee to make only limited use of this programming, and will examine whether specific measures limiting the rebroadcast audio material from specialty television services are appropriate at the time that it considers an application to renew the licence for this undertaking. The Commission reminds the applicant that network licences would be required in those cases where programming from a programming undertaking owned by another licensee was rebroadcast simultaneously on one or more of the channels offered by the CHUM/Astral undertaking.

10. CHUM/Astral further proposed to increase the number of channels offered in year four of operations. The applicant indicated that, if the CHUM/Astral application were the sole application for a subscription radio undertaking that was approved, all of the additional channels would be Canadian-produced. The applicant indicated that the actual composition of the additional channels would depend, to some extent, on whether or not the Commission licensed one or more satellite subscription radio undertakings and the regulatory framework under which subscription radio services would operate. CHUM/Astral was of the view, however, that approximately 30 of the additional channels could consist of spoken word programming such as a wilderness channel, a lifestyle channel and a book channel.
11. Given the uncertainty surrounding the content of the 50 additional channels, and in light of the Commission's decision to approve not only the CHUM/Astral application but also the two applications for satellite subscription radio undertakings, the Commission considers that it is appropriate to authorize CHUM/Astral to offer 50 channels at the outset under the terms and conditions set out in this decision. The Commission will be prepared to consider an application to expand the number of channels offered once CHUM/Astral is able to provide more complete plans concerning the content of the additional channels and whether or not they will be Canadian-produced.

Canadian content

12. As indicated earlier, the applicant made a commitment that all 50 channels would be Canadian produced. A **condition of licence** to this effect is set out in the appendix to this decision.
13. The applicant further indicated that each channel would fulfil weekly requirements for levels of Canadian music comparable to those that apply to conventional radio stations. Under the terms of the *Radio Regulations, 1986* (the Regulations), radio licensees, subject to conditions of licence, must devote, during each broadcast week, at least 35% of musical selections from content category 2 (Popular Music), at least 10% of musical selections from content category 3 (Special Interest Music) and at least 7% of musical selections played during ethnic programming periods to Canadian musical selections. The Commission further allows "oldies" stations, by condition of licence, to devote 30% of musical selections from content category 2 to Canadian selections, in light of the more limited availability of Canadian music appropriate to the format. **Conditions of licence** setting out these requirements are set out in the appendix to this decision.

French-language channels

14. The applicant proposed that 10 channels, or 20% of the 50 channels offered, would be French-language channels.
15. The French-language channels would include channels featuring hit-oriented music (Palmarès, Musique Plus-Radio, Radio Émergence), adult contemporary and oldies (Doux Frissons, Les immortels, Pop 60), Rock (Québec Rock) classical (Classique) Comedy (Franco-Fun) and children's programming (La zone des petits).

16. The applicant proposed that all of the French-language music-oriented channels, with the exception of Palmarès and Radio Émergence, would devote at least 65% of the category 2 vocal musical selections broadcast each week to French-language selections, in accordance with the minimum levels set out in the Regulations. Specifically, the applicant proposed that all music broadcast on Québec Rock would consist of French-language selections and all programming on Franco-Fun would be in French. For Palmarès and Radio Émergence, the applicant proposed to broadcast a 50% level of French-language vocal music selections. The applicant noted that Palmarès would program current hit songs in various musical niches and genres that are not well-served by conventional radio, and Radio Émergence would be devoted to the presentation of new music. The applicant considered that the availability of French-language music appropriate for these channels was insufficient for them to broadcast a 65% level of French-language vocal music and still provide channels that would be attractive to younger listeners. At the hearing, the applicant indicated that it would accept a condition of licence requiring that at least 65% of the category 2 vocal musical selections broadcast on all of its French-language channels, considered together, be French-language selections. A **condition of licence** to this effect is set out in the appendix to this decision.
17. At the hearing, the Association québécoise de l'industrie du disque du spectacle et de la vidéo (ADISQ) submitted that 10 French-language channels, or 20% of the total channels offered, was insufficient and would not be enough to ensure that the CHUM/Astral undertaking provided a sufficient diversity of French-language musical content. ADISQ noted that the proposed 20% level of French-language channels was below the 25% level required of pay audio services.
18. The Commission notes that the applicant originally proposed to distribute five French-language channels, but later increased the number of French-language channels to 10. The Commission considers that it is reasonable for the undertaking to offer 10 French-language channels at the outset. Earlier in the decision, the Commission indicated that it would be prepared to consider an application by CHUM/Astral to increase the number of channels that it offers when CHUM/Astral is able to provide more complete plans concerning the content of the additional channels. The Commission considers that it would be appropriate to review the percentage of French-language channels offered at that time. A **condition of licence** with respect to the percentage of French-language channels that must be offered is set out in the Appendix to this decision.

New Canadian music

19. CHUM/Astral proposed that a minimum of 50% of the musical selections on albums by English-Canadian artists that have been released and marketed in the previous six months would receive airplay on its English-language channels, and a minimum of 50% of the musical selections on albums by French-Canadian artists that have been released and marketed in the previous six months would receive airplay on its French-language channels.

20. The Commission considers that this initiative will increase the variety of Canadian music available in the Canadian broadcasting system and expects the applicant to fulfil its commitments in this regard.

Canadian talent development

21. CHUM/Astral made a commitment to devote 2% of annual revenues from the new subscription radio service to Canadian talent development (CTD). Based on the applicant's projections, this percentage commitment would translate to a total of \$8.3 million to CTD over a seven-year licence term. 75% of the money would be allocated to initiatives supporting Canadian English-language talent, and 25% would go to initiatives supporting Canadian French-language talent.
22. The money would be divided equally among three types of initiatives, with one-third going to Fund to Assist Canadian Talent on Record (FACTOR) or MusicAction and one-third going to the Starmaker Fund or Fonds RadioStar. Most of the remaining third would go to other qualifying third-party initiatives designed for CTD, however, the applicant proposed that 10% of this amount would be used to finance recordings by artists of alternative versions of their existing recordings in different musical styles as a means to expand the artists' appeal.
23. At the hearing, the Commission discussed with the applicant why it had proposed to devote 2% of annual revenues to CTD, given that the two applicants for satellite radio undertakings had proposed higher percentages. In reply, CHUM/Astral noted that its proposal, which was entirely reliant on the construction of terrestrial facilities, required greater capital expenditures than the proposed satellite undertakings. CHUM/Astral further noted that its channels would have much higher overall Canadian content levels than the satellite undertakings and would therefore make a greater contribution to Canadian artists in the form of providing airplay for their recordings. As well, the applicant noted that it would program 50 and, ultimately, 100 Canadian channels, versus the 5 Canadian channels originally proposed by the satellite applicants, so its programming expenses would be much higher.
24. The Commission considers that CHUM/Astral's proposal for CTD is acceptable and has included a **condition of licence** in the appendix to this decision requiring it to fulfil its commitments. The condition of licence further requires the licensee to file annual reports on the fulfilment of its CTD commitments by setting out the initiatives that have been financed and the amount of money spent on each initiative, as well as the total amounts devoted to French-language and English-language talent.

Local programming

25. CHUM/Astral indicated that, although it would draw some of its programming from existing radio stations, none of the programming that was broadcast on the proposed undertaking would consist of local surveillance information or other programming designed specifically for a particular geographic community or locality. A **condition of licence** to this effect is set out in the appendix to this decision.

Commercial messages

26. The applicant indicated that no commercial messages would be broadcast by the proposed undertaking. A **condition of licence** to this effect is set out in the appendix to this decision.

Responsibility for programming

27. The applicant indicated that it would be responsible for all programming broadcast on the undertaking, and stated that, if licensed, it would become a member of the Canadian Broadcast Standards Council (CBSC).
28. The Commission has included, in the appendix to this decision, a **condition of licence** that requires the applicant to adhere to sections 3, 6, 8(1) to 8(6), 9, 10, 10.1 and 11 of the Regulations.
29. The Commission is further imposing a **condition of licence** requiring adherence to the *Sex-Role Portrayal Code for Television and Radio Programming*, as amended from time to time and approved by the Commission. In accordance with the Commission's practice, this condition will be suspended as long as the licensee is a member in good standing of the CBSC.
30. In the event that CHUM/Astral should decide to broadcast open line programming, the Commission expects it to adhere to the Commission's *Policy regarding open-line programming*, Public Notice CRTC 1988-213, 23 December 1988.

Employment equity

31. The Commission considers that it is appropriate for CHUM/Astral to include its employment equity initiatives related to the proposed undertaking with the employment equity plan in place for CHUM, its majority shareholder. Because CHUM and Astral are subject to the *Employment Equity Act* and file reports concerning employment equity with the Department of Human Resources and Skills Development, its employment equity practices are not examined by the Commission.

Cultural diversity

32. At the hearing, the applicant indicated that it was exploring potential programming projects with Aboriginal Voices Radio (AVR), including the rebroadcast of AVR's programming as part of the proposed undertaking's Aboriginal channel. The applicant also noted that it would distribute channels targeting the Chinese, German, South Asian and Italian communities. The Commission encourages the applicant to implement cultural diversity initiatives.

Conclusion

33. The Commission **approves** the application by CHUM Limited on behalf of a corporation or a partnership to be established. It will issue a broadcasting licence expiring 31 August 2011 to operate a terrestrial subscription radio undertaking subject to the **conditions** set out in the appendix to this decision.
34. The CHUM/Astral undertaking is authorized to operate single frequency networks to serve the areas of St. John's (Newfoundland and Labrador), Charlottetown (Prince Edward Island), Halifax (Nova Scotia), Saint John (New Brunswick), Gatineau, Montréal, Québec, Sherbrooke, Trois-Rivières (Quebec), Barrie, Oshawa, Hamilton, Kingston, Kitchener/Guelph, London, Ottawa, St. Catharines/Niagara, Toronto, Windsor (Ontario), Winnipeg (Manitoba), Regina, Saskatoon (Saskatchewan), Calgary, Edmonton, Red Deer (Alberta), Vancouver, the Fraser Valley, Victoria (British Columbia), as described in, and according to the technical parameters set out in the approved application.
35. The Commission reminds the applicant that, pursuant to section 22(1) of the *Broadcasting Act*, no licence may be issued until the Department of Industry (the Department) notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued. The technical requirements are set out in Annex 2 of the Department's letter to the Commission and copied to the applicant entitled *Issuance of technical broadcasting certificates for applications authorized to provide subscription radio services*, 21 September 2004. CHUM/Astral must also provide the Commission with a copy of all technical submissions, including coverage maps, that it sends to the Department.
36. The licence for this undertaking will be issued once
 - the Commission receives confirmation of the CHUM/Astral ownership structure, i.e. whether it involves incorporation of a new corporation or establishment of a partnership of the new licensee comprised of CHUM (80.1%) and Astral (19.9%). If the new licensee is a duly incorporated corporation, the licence will be issued to this corporation. If the new licensee is a partnership, the licence will be issued to the partners;
 - the Commission receives all documentation supporting the licensee's ownership structure (where applicable, Certificate of Incorporation, Articles of Incorporation, By-laws, Unanimous Shareholders Agreement, Partnership Agreement, composition of the Board of Directors, etc.);
 - CHUM/Astral demonstrates that the licensee is a qualified corporation pursuant to the *Direction to the CRTC (Ineligibility of Non-Canadians)*; and
 - the applicant has informed the Commission in writing that it is prepared to commence operations.

37. The Commission notes that the applicant proposed to begin operating the undertaking in a limited number of centres and expand the number of communities that it serves as the first licence term progresses. The undertaking must commence operations 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 16 June 2007. 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.

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 2005-248

Conditions of licence for the terrestrial subscription radio undertaking operated by CHUM Limited and Astral Media Radio Inc.

1. The licensee shall distribute 50 audio channels, all of which must be produced in Canada.
2. A minimum of 20% of the audio channels offered at any time must be French-language channels.
3. A maximum of 10% of the programming distributed each week on a French-language or English-language channel may consist of programming that was originally broadcast on licensed A.M. or F.M. stations.
4. (1) For the purposes of this condition, “ethnic programming period” means that portion of a broadcast week during which a licensee broadcasts ethnic programs.

(2) For the purposes of this condition, “Canadian selection” means a musical selection
 - (a) that meets at least two of the following conditions, namely,
 - (i) the music is or lyrics are performed principally by a Canadian,
 - (ii) the music is composed entirely by a Canadian,
 - (iii) the lyrics are written entirely by a Canadian,
 - (iv) the musical selection consists of a live performance that is
 - (A) recorded wholly in Canada, or
 - (B) performed wholly in and broadcast live in Canada, and
 - (v) the musical selection was performed live or recorded after September 1, 1991, and a Canadian who has collaborated with a non-Canadian receives at least fifty per cent of the credit as composer and lyricist according to the records of a recognized performing rights society;
- (b) that is an instrumental performance of a musical composition that meets the conditions set out in subparagraph (a)(ii) or (iii);
- (c) that is a performance of a musical composition that a Canadian has composed for instruments only; or
- (d) that has already qualified as a Canadian selection under regulations previously in effect.

- (3) The licensee shall, in a broadcast week, devote 10% or more of its musical selections from content category 3 broadcast on each channel to Canadian selections and schedule them in a reasonable manner throughout each broadcast day.
- (4) Where 7 % or more of the musical selections broadcast by the licensee on any channel during an ethnic programming period are Canadian selections and are scheduled in a reasonable manner throughout that period, condition of licence 4(6) shall apply only in respect of those musical selections that are broadcast on that channel during that part of the broadcast week that is not devoted to ethnic programs.
- (5) The licensee may on any channel in a broadcast week, reduce the percentage of its Canadian musical selections from content category 2 referred to in condition of licence 4(6) to
 - (a) not less than 20% if, in that broadcast week, the licensee devotes 35% or more but less than 50% of all its musical selections to instrumental selections; and
 - (b) not less than 15% if, in that broadcast week, the licensee devotes 50% or more of all its musical selections to instrumental selections.
- (6) The licensee shall, on each channel, in a broadcast week, devote 35% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety and schedule them in a reasonable manner throughout each broadcast day.
- (7) For the purpose of this condition of licence, a montage is deemed to be a Canadian selection broadcast in its entirety if
 - (a) the total duration of the excerpts of Canadian selections from content category 2 is greater than 50% of the total duration of the montage; and
 - (b) the total duration of the montage is four minutes or more.
- (8) The licensee shall, as an exception to the percentage of Canadian musical selections set out in condition of licence 4(6) above, on a channel where at least 90% of the musical selections from content category 2 that it broadcasts are selections released before 1 January 1981:
 - in that broadcast week, devote 30% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

For purposes of this condition, the licensee will also be responsible for specifying, on the music lists it provides to the Commission, the year of release for all musical selections it broadcasts.

5. The licensee shall, on its French-language channels, considered together, in each broadcast week, devote 65% or more of its vocal music selections from content category 2 to musical selections in the French language and schedule them in a reasonable manner throughout each broadcast day.

For the purpose of this condition, a montage is deemed to be a musical selection in the French language broadcast in its entirety if

- (a) the total duration of the excerpts of vocal musical selections in the French language in content category 2 is greater than 50% of the total duration of the montage; and
 - (b) the total duration of the montage is four minutes or more.
6. During each broadcast year, the licensee shall contribute a minimum of 2% of gross annual revenues to Canadian talent development, as described in this decision. Three-quarters of the total amount shall be devoted to initiatives to support Canadian English-language talent and the remainder shall be devoted to initiatives to support Canadian French-language talent. The licensee shall file reports on its fulfilment of its commitments with respect to Canadian talent development with each annual return. The report shall set out the initiatives that the licensee has supported, the amount of money spent on each initiative, as well as the total money devoted to Canadian English-language and French-language talent.
7. The licensee shall not broadcast any local surveillance information or other programming designed specifically for a particular geographic community or locality.
8. The licensee shall not broadcast any commercial messages.
9. The licensee shall adhere to sections 3, 6, 8(1) to 8 (6), 9, 10, 10.1 and 11 of the *Radio Regulations, 1986*.
10. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' (CAB) *Sex-Role Portrayal Code for Television and Radio Programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee is a member in good standing of the Canadian Broadcast Standards Council.

11. For the purposes of all of the conditions of licence set out above, the terms “A.M. station,” “broadcast day,” “broadcast week,” “commercial message,” “content category,” “content subcategory,” “ethnic program,” “F.M. station,” “licensed,” “montage,” and “musical selection,” shall have the meaning set out in section 1 of the *Radio Regulations, 1986*. All times shall be determined according to the Eastern time zone.