Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting Decision CRTC 2012-108

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Ottawa, 20 February 2012

Newcap Inc.
Kelowna, British Columbia

Application 2011-1202-8, received 19 August 2011
Public hearing in Miramichi, New Brunswick
16 January 2012

CKKO-FM Kelowna – Acquisition of assets

The Commission ***approves*** *the application by Newcap Inc. for authority to acquire from Sun Country Radio Ltd. the assets of the English-language commercial radio programming undertaking CKKO-FM Kelowna, British Columbia and for a broadcasting licence to continue the operation of the undertaking.*

The application

1. The Commission received an application by Newcap Inc. (Newcap) for authority to acquire from Sun Country Radio Ltd. (Sun Country) the assets of the English-language commercial radio programming undertaking CKKO-FM Kelowna. The applicant also requested a new broadcasting licence to continue the operation of the undertaking under the same terms and conditions as those in effect under the current licence.

2. Newcap is a corporation controlled by Mr. Harold R. Steele.

3. The Commission received an intervention in support of this application, as well as an intervention offering general comments from Corus Entertainment Inc. (Corus). Newcap did not reply to the interventions. The public record for this application is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

Commission's analysis and decisions

4. After examining the application in light of applicable regulations and policies, the Commission considers that the issues it must address relate to the following:

    - the assessment of the value of the transaction;

- the assessment of the proposed tangible benefits package;
- the licensee's non-compliance with its obligations relating to Canadian content development (CCD) contributions; and
- whether approval of the present application would undermine the integrity of the Commission's licensing process.

Assessment of the value of the transaction

5. Because the Commission does not solicit competing applications for authority to transfer the ownership or control of radio, television and other programming undertakings, the onus is on the applicant to demonstrate that the benefits proposed in the application are commensurate with the size and nature of the transaction (see Public Notice 1998-41 and Broadcasting Public Notice 2006-158).

6. In accordance with the Asset Purchase and Sale Agreement dated 3 August 2011 (the Agreement), the purchase price is $5 million.

7. In assessing the value of the transaction, the Commission's general practice is to:

   - review the purchase price to determine if adjustments are required, pursuant to the provisions included in the purchase agreement; and
   - include in the value of the transaction the assumed leases and debt.

8. The Commission notes that the Agreement provides for the purchase price to be adjusted to reflect the value of the working capital, which is $74,500. In addition, the purchaser will be assuming leases in the amount of $378,077 and debts in the amount of $25,570.

9. Consequently, the revised value of the transaction amounts to $5,329,147, as shown in the following table.

Purchase price	**$5,000,000**
Working Capital	-$74,500
Adjusted Purchase Price	**$4,925,500**
Additions	
Assumed Leases	$378,077
Assumed Debt	$25,570
Revised Value of the Transaction	**$5,329,147**

Assessment of the proposed tangible benefits package

10. Consistent with the Commission's tangible benefits policy set out in Broadcasting Public Notice 2006-158, Newcap proposed a tangible benefits package equal to 6% of the proposed value of the transaction (i.e., $300,000).

11. Consistent with the revised value of transaction, the required value of the proposed tangible benefits package will increase from the proposed $300,000 to $319,749 (i.e., 6% of the revised amount of $5,329,147).

12. In accordance with Broadcasting Regulatory Policy 2010-499, the Commission therefore directs Newcap to allocate its benefits contribution as follows over seven consecutive broadcast years:

    - $159,874 to the Radio Starmaker Fund;
    - $79,937 to FACTOR;
    - $53,292 to an eligible CCD initiative, at the discretion of the purchaser; and
    - $26,646 to the Community Radio Fund of Canada.

Non-compliance with obligations relating to Canadian content development contributions

13. The Commission's analysis reveals that CKKO-FM failed to comply with section 15 of the *Radio Regulations, 1986*, which relates to CCD contributions, as well as with its condition of licence relating to CCD contributions, for the 2008-2009 and 2009-2010 broadcast years. More specifically, Sun Country experienced a shortfall of $12,498 in regard to its required CCD contributions and further failed to distribute the required amounts to FACTOR or MUSICACTION. The Commission notes that Newcap has agreed to pay the outstanding CCD contribution amounts owed by Sun Country. Accordingly, the Commission directs Newcap to fulfill the $12,498 shortfall by no later than **21 March 2012** and to file with the Commission appropriate proof of payment of that shortfall. A **condition of licence** to that effect is set out in the appendix to this decision.

Would approval of the present application undermine the integrity of the Commission's licensing process?

14. In its intervention, Corus did not oppose the application, but expressed concerns relating to the integrity of the Commission's licensing process, given that the proposed sale of the station would occur during CKKO-FM's first licence term. In this regard, the Commission notes that it granted a broadcasting licence to Sun Country to operate this radio programming undertaking in Broadcasting Decision 2008-62.

15. As set out in Broadcasting Information Bulletin 2010-220, during the first two years following the launch of a service, any application for a transaction involving the licence for that service will normally be denied, except where the applicant can demonstrate the necessity of the transaction as a result of a *force majeure* event. In regard to the present case, the Commission notes that Sun Country launched its operation in November 2008, more than two years prior to the submission of the present application. Accordingly, it is the Commission's view that the integrity of its licensing process would not be undermined by approval of the present application.

Conclusion

16. In light of the above, the Commission **approves** the application by Newcap Inc. for authority to acquire from Sun Country Radio Ltd. the assets of the English-language commercial radio programming undertaking CKKO-FM Kelowna and for a new broadcasting licence to continue the operation of the undertaking.

17. Upon surrender of the current licence, the Commission will issue a new broadcasting licence to Newcap Inc. for CKKO-FM Kelowna under the terms and **conditions of licence** set out in the appendix to this decision.

Employment equity

18. Because this licensee is subject 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

Related documents

- *Campus and community radio policy*, Broadcasting Regulatory Policy CRTC 2010-499, 22 July 2010

- *Revised criteria for the application of the licence trafficking policy*, Broadcasting Information Bulletin CRTC 2010-220, 19 April 2010

- *Licensing of new radio stations to serve Kelowna, British Columbia*, Broadcasting Decision CRTC 2008-62, 14 March 2008

- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006

- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998

**This decision is to be appended to the licence.*

Appendix to Broadcasting Decision CRTC 2012-108

Term, conditions of licence and expectation for CKKO-FM Kelowna

Term

The licence will expire 31 August 2014.

Conditions of licence

1. The licence will be subject to the conditions set out in *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in sections 2.2(8) and 2.2(9) of the *Radio Regulations, 1986* (the Regulations), in any broadcast week:

    a) devote, in that broadcast week, a minimum of 40% of its musical selections from content category 2 (Popular music) to Canadian selections broadcast in their entirety; and

    b) devote, between 6:00 a.m. and 6:00 p.m., in the period from Monday to Friday of the same broadcast week, 40% or more of its musical selections from content category 2 to Canadian selections broadcast in their entirety.

    For the purposes of this condition of licence, the terms "broadcast week," "Canadian selection," "content category" and "musical selection" shall have the same meaning as that set out in the Regulations.
3. In addition to the basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986*, as amended from time to time, the licensee shall contribute $45,000 annually to the promotion and development of Canadian content. Of this amount, no less than $9,000 per year shall be devoted to FACTOR or MUSICACTION. The remainder of this additional CCD contribution (i.e., $36,000) 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.
4. The licensee shall, by no later than **21 March 2012**, make a contribution to Canadian content development in the amount of $12,498, of which no less than 20% shall be directed to FACTOR or MUSICACTION.

Expectation

Cultural diversity

The Commission expects the licensee to reflect the cultural diversity of Canada in its programming and employment practices.