



Broadcasting Decision CRTC 2018-240

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Reference: 2018-106

Ottawa, 12 July 2018

Newcap Inc.

New Glasgow, Nova Scotia

Public record for this application: 2017-1026-0

Public hearing in the National Capital Region

31 May 2018

CKEC-FM and CKEZ-FM New Glasgow – Acquisition of assets

*The Commission **approves** the application by Newcap Inc. for authority to acquire the assets of the English-language commercial radio stations CKEC-FM and CKEZ-FM New Glasgow from Hector Broadcasting Limited and for new broadcasting licences to continue the operation of the stations.*

Application

1. Newcap Inc. (Newcap) filed an application for authority to acquire the assets of the English-language commercial FM radio stations CKEC-FM and CKEZ-FM New Glasgow from Hector Broadcasting Limited (Hector Broadcasting). Newcap also requested new broadcasting licences to continue the operation of the undertakings under the same conditions as those in effect under the current licences.¹
2. Newcap is wholly owned by Newfoundland Capital Corporation Limited and controlled by Harold R. Steele, a Canadian pursuant to the *Direction to the CRTC (Ineligibility of Non-Canadians)*.
3. Pursuant to the asset purchase and sale agreement, the applicant would purchase the assets of the undertakings for \$2,700,000.
4. Upon completion of the transaction, Newcap would become the licensee of CKEC-FM and CKEZ-FM.
5. The Commission received an intervention by an individual opposing the application.

¹ The current licences for CKEZ-FM and CKEC-FM expire on 31 August 2018 and 31 August 2020 respectively.

Regulatory framework

6. The review of ownership transactions is an essential element of the Commission's regulatory and supervisory mandate under the *Broadcasting Act* (the Act). Since the Commission does not solicit competitive applications for changes in effective control of broadcasting undertakings, the onus is on the applicant to demonstrate that approval is in the public interest, that the benefits of the transaction are commensurate with the size and nature of the transaction and that the application represents the best possible proposal under the circumstances.
7. The Commission must consider each application on its merits, based on the circumstances specific to the application. In addition, the Commission must be assured that approval of a proposed ownership transaction furthers the public interest as expressed in the objectives set out in section 3(1) of the Act.

Commission's analysis and decisions

8. After examining the public record for this application in light of applicable regulations and policies, the Commission considers that it must address the following issues:
 - the impact on the broadcasting system;
 - the value of the transaction and tangible benefits; and
 - the length of the new licence terms to be granted to the stations and other measures in light of instances of non-compliance.

Impact on the broadcasting system

9. Newcap explained that Hector Broadcasting had decided to divest itself of its stations due to financial difficulties following the launch of its second station in New Glasgow.
10. Newcap noted that it has financial resources and experience in markets of a similar size, including experience in acquiring and restoring stations in financial difficulty. Newcap further noted that the acquisition would allow it to increase its presence in Nova Scotia, where it currently owns five other stations, while also complying with the Commission's policy on common ownership.
11. The Commission considers that Newcap, as an experienced broadcaster, has the ability to ensure the continued operation of the stations and to serve the audience in the small New Glasgow market. Consequently, the Commission is of the view that the transaction would benefit the broadcasting system and the population of New Glasgow.

Value of the transaction and tangible benefits

12. Pursuant to Broadcasting Regulatory Policy 2014-459 (the Policy), tangible benefits for a change in the ownership or control of commercial radio stations must generally represent at least 6% of the value of the transaction, to be allocated to the Radio Starmaker Fund or Fonds Radiostar (3%), FACTOR or MUSICACTION (1.5%), eligible Canadian content development (CCD) initiatives at the discretion of the purchaser (1%) and the Community Radio Fund of Canada (CRFC) (0.5%).
13. Newcap proposed a value of the transaction of \$3,086,292 and a tangible benefits package of \$185,178, which is equal to 6% of the proposed value of the transaction. The proposed value included the purchase price, working capital and the seller's employment contract, which comprises a software licence.
14. The Commission has revised the amounts for working capital and the licence according to Commission practice and established the value of the transaction at \$3,206,957, as follows:

Value of the transaction

Purchase price	\$2,700,000
Working capital	\$47,369
Additions:	
Employment contract	\$450,000
Software licence	\$9,588
Value of the transaction	\$3,206,957

15. Consistent with the Policy, the Commission **directs** Newcap to pay tangible benefits amounting to \$192,417 (6% of the revised value of the transaction), to be allocated as follows in equal annual payments over seven consecutive broadcast years:
 - 3% (\$96,209) to Radio Starmaker Fund or Fonds Radiostar;
 - 1.5% (\$48,104) to FACTOR or MUSICACTION;
 - 1% (\$32,070) to any eligible CCD initiative at the discretion of the purchaser; and
 - 0.5% (\$16,034) to the CRFC.

Length of the new licence terms to be granted to the stations and other measures in light of instances of non-compliance

16. The Commission's approach to non-compliance by radio stations is set out in Broadcasting Information Bulletin 2014-608. Under that approach, each instance of non-compliance is evaluated in its context and in light of factors such as the quantity,

recurrence and seriousness of the non-compliance. The circumstances leading to the non-compliance, the arguments provided by the licensee and the actions taken to rectify the situation are also considered.

17. In Broadcasting Notice of Consultation 2018-106, the Commission noted that the current licensee appears to be in non-compliance with section 15(2) of the *Radio Regulations, 1986* (the Regulations) relating to the payment of basic annual CCD contributions for CKEC-FM.
18. In addition, the Commission noted that the licensee appears to be in non-compliance with the following regulatory requirements for CKEZ-FM:
 - condition of licence 2 set out in the appendix to Broadcasting Decision 2012-278 relating to the broadcast of Canadian musical selections from content category 2 (Popular Music);
 - sections 8(1), 8(2) and 9(3)(b) of the Regulations relating to the submission of complete and accurate logs, records and music lists; and
 - condition of licence 3 set out in the appendix to Broadcasting Decision 2012-278 relating to the payment of annual over-and-above CCD contributions.

CKEC-FM

19. Section 15 of the Regulations requires commercial radio licensees with revenues exceeding \$1.25 million in the previous broadcast year to make a basic annual CCD contribution. At least 15% of this contribution must be allocated to the CRFC and at least 45% to FACTOR or MUSICACTION.
20. According to Commission records, the licensee exceeded its required basic CCD for the 2013-2014 broadcast year, but incurred shortfalls totaling \$257 with respect to the amounts to be paid to FACTOR and the CRFC.
21. Newcap acknowledged the shortfalls and explained that they were a result of the current licensee's misunderstanding of the regulatory requirements relating to CCD. Newcap stated that the shortfalls were paid by Hector Broadcasting in January 2018 and provided proof of payment from the recipients. Newcap added that the conditions that existed at the time of the non-compliance would no longer exist if its application were approved, noting that it has extensive procedures surrounding the management of CCD obligations.
22. In light of the above, the Commission finds the licensee in non-compliance with section 15 of the Regulations for the 2013-2014 broadcast year.
23. This is the first instance of non-compliance relating to CKEC-FM's basic CCD contributions. Moreover, the shortfalls to FACTOR and the CRFC were rectified immediately after the issue was brought to Newcap's attention, and the licensee

exceeded its required basic CCD for the 2013-2014 broadcast year. In light of the above, the Commission considers that the non-compliance was the result of inadvertent errors made in good faith.

24. Accordingly, consistent with the approach to non-compliance set out in Broadcasting Information Bulletin 2014-608, the Commission finds it appropriate to issue a new broadcasting licence for CKEZ-FM expiring 31 August 2024.

CKEZ-FM

Canadian popular music selections

25. Condition of licence 2 set out in the appendix to Broadcasting Decision 2012-278 requires CKEZ-FM to devote at least 40% of its content category 2 (Popular Music) selections in each broadcast week to Canadian music. This exceeds the minimum requirement for commercial stations set out in the Regulations and was proposed as a commitment by Hector Broadcasting in its application to obtain a broadcasting licence for CKEZ-FM.
26. According to Commission records, in the broadcast week of 27 November to 3 December 2016, CKEZ-FM devoted only 22.5% of its popular music selections to Canadian music.
27. Newcap explained that the non-compliance was the result of human error and technical difficulties resulting from the installation of new software. Newcap stressed that if its application were approved, the conditions that existed when the non-compliance occurred would cease as it has stringent programming management procedures, including training and a unified automation system, which it would undertake to implement for CKEZ-FM and CKEC-FM.
28. In light of the above, the Commission finds the licensee in non-compliance with condition of licence 2 set out in the appendix to Broadcasting Decision 2012-278.
29. A licensee's failure to comply with music programming requirements may cause harm to the broadcasting system. In the present case, the shortfall in the broadcast of Canadian musical selections deprived certain artists of airplay and royalties. Further, Canadian music listeners were deprived of the opportunity to listen to Canadian music, which runs counter to the objectives of the Act with regard to safeguarding, enriching and strengthening the cultural fabric of Canada.
30. In Broadcasting Regulatory Policy 2014-554, the Commission considered it appropriate to introduce a measure whereby, in certain circumstances, radio station licensees in non-compliance with their programming obligations would be required to make additional CCD contributions beyond those required by the Regulations and existing conditions of licence.
31. When questioned about the imposition of an additional CCD contribution as a remedial measure, Newcap stated that the licensee agreed that additional CCD

contributions would be an appropriate measure to address this instance of non-compliance and that it would make arrangements with the licensee for paying the additional CCD contributions and filing the necessary proof of payment with the Commission.

32. Accordingly, in order to compensate for the loss incurred to the broadcasting system for the shortfall in Canadian music broadcast on CKEZ-FM, the Commission has set out a **condition of licence** in Appendix 2 of this decision requiring the licensee to make an additional CCD contribution of \$2,100 to FACTOR or MUSICACTION in the first broadcast year of the new licence term.

Submission of logs and music lists

33. Sections 8(1), 8(2) and 9(3)(b) of the Regulations set out requirements for radio station licensees to keep and file (upon request) program logs and music lists relating to the programming broadcast on a station. Complete and accurate program logs and music lists enable the Commission to verify compliance with regulatory requirements.
34. In this case, the program log submitted by the licensee for the broadcast week of 27 November to 3 December 2016 did not reflect the order in which the programming was broadcast, the information in the music list and the totals in a self-assessment report. Similarly, the information in the music list did not reflect the information in the program log or the order in which the musical selections were broadcast.
35. As in the case of the shortfall in Canadian popular music selections, Newcap explained that the non-compliance was the result of human error and technical difficulties. Newcap added that it would accept a short-term licence period, but that any additional measures to address this particular instance of non-compliance would be punitive and unnecessary and would bear no relevance to its ability to ensure future compliance.
36. In light of the above, the Commission finds the licensee in non-compliance with sections 8(1), 8(2) and 9(3)(b) of the Regulations. Further, in order to allow for an earlier review of the licensee's compliance with regulatory requirements, the Commission finds it appropriate to issue a new broadcasting licence for CKEZ-FM expiring 31 August 2023.

Annual over-and-above CCD contributions

37. Pursuant to condition of licence 3 set out in the appendix to Broadcasting Decision 2012-278, the licensee was required to make annual over-and-above CCD contributions of \$5,000 over seven broadcast years, with at least 20% of this amount to be allocated to FACTOR or MUSICACTION. This contribution is in addition to the basic annual CCD requirement set out in section 15 of the Regulations and was proposed by Hector Broadcasting in its application to obtain a broadcasting licence for CKEZ-FM.

38. According to Commission records, CKEZ-FM commenced operations on 22 September 2014. However, the licensee did not report any over-and-above CCD payments during the 2014-2015 broadcast year, incurring a pro-rated CCD shortfall of \$4,583.
39. Newcap acknowledged the shortfall and explained that it was due to the licensee's misunderstanding of the regulatory requirements relating to CCD. Newcap submitted that the licensee overspent CCD for CKEC-FM and CKEZ-FM from the 2013-2014 to 2016-2017 broadcast years. It added that Hector Broadcasting proposed to apply this overpayment, along with payments made to FACTOR in the 2017-2018 broadcast year, to cover the shortfall in over-and-above CCD contributions for the 2014-2015 broadcast year.
40. Newcap further noted that it has extensive procedures surrounding the management and reconciliation of CCD, which would be applied to CKEC-FM and CKEZ-FM to ensure future compliance.
41. As stated in Broadcasting Information Bulletin 2009-251, over-and-above CCD contributions must be paid on an annual basis and cannot be deferred unless prior authorization is obtained from the Commission. Deducting the licensee's CCD overpayments before the end of the 2014-2015 broadcast year reduces its shortfall in over-and-above CCD for that broadcast year to \$3,117.
42. The shortfall was rectified in January 2018, more than two years and four months past the 31 August 2015 deadline.
43. In light of the above, the Commission finds the licensee in non-compliance with condition of licence 3 set out in the appendix to Broadcasting Decision 2012-278 for the 2014-2015 broadcast year.
44. The Commission notes that contributions to CCD not only help to develop and advance the careers of emerging Canadian artists, but also to increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. The non-payment of CCD contributions therefore has the potential to cause harm to the Canadian broadcasting system.
45. Under its approach to non-compliance, the Commission may require the licensee to pay an additional CCD contribution equivalent to the amount of the shortfall, as well as repay any outstanding amount, as a remedial measure for the harm caused to the broadcasting system. When questioned about the imposition of an additional CCD contribution as a remedial measure, Newcap and the licensee agreed that additional CCD would be an appropriate measure to address this instance of non-compliance. Newcap stated that it would make arrangements with Hector for the additional CCD to be paid and for proof of payment and eligibility to be submitted to the Commission.

46. Accordingly, consistent with its approach to non-compliance, the Commission has set out a **condition of licence** in Appendix 2 of this decision requiring an additional CCD payment of \$3,117 to be allocated according to section 15(5) of the Regulations in order to compensate for the loss incurred in the broadcasting system for the years the CCD contributions went unfulfilled.
47. Further, with respect to the remaining annual over-and-above CCD contributions, the Commission stated in the Policy that outstanding benefits in the context of ownership transactions are to be paid in the most efficient manner possible and in a timeframe that does not exceed the original payment schedule. Newcap confirmed that it would accept a condition of licence requiring it to pay the remaining annual over-and-above CCD in accordance with the original payment schedule set out in condition of licence 3. Accordingly, to ensure that the licensee fulfills the outstanding over-and-above CCD commitments, the Commission has set out a **condition of licence** in Appendix 2 of this decision requiring the licensee to make equal annual contributions of \$5,000 by the end of the 2018-2019, 2019-2020 and 2020-2021 broadcast years.

Conclusion

48. In light of all the above, the Commission **approves** the application by Newcap for authority to acquire the assets of the English-language commercial radio programming undertakings CKEC-FM and CKEZ-FM New Glasgow.
49. Upon surrender of the current licences issued to Hector Broadcasting Limited, the Commission will issue new broadcasting licences to Newcap Inc. The licence for CKEC-FM will expire 31 August 2024 and will be subject to the **conditions of licence** set out in Appendix 1 to this decision. The licence for CKEZ-FM will expire 31 August 2023 and will be subject to the **conditions of licence** set out in Appendix 2 to this decision.

Employment equity

50. Because this licensee is subject to the *Employment Equity Act* and files reports with the Department of Employment and Social Development, its employment equity practises are not examined by the Commission.

Secretary General

Related documents

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2018-106, 27 March 2018
- *Update on the Commission's approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608, 21 November 2014

- *A targeted policy review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *English-language FM radio station in New Glasgow/Pictou County*, Broadcasting Decision CRTC 2012-278, 9 May 2012
- *Clarifications regarding Canadian content development contributions made by commercial radio stations*, Broadcasting Information Bulletin CRTC 2009-251, 5 May 2009

This decision and the appropriate appendix are to be attached to each licence.

Appendix 1 to Broadcasting Decision CRTC 2018-240

Terms, conditions of licence and expectation for the English-language commercial radio programming undertaking CKEC-FM New Glasgow, Nova Scotia

Terms

The licence will expire 31 August 2024.

Conditions of licence

1. The licensee shall adhere 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, as well as to the conditions set out in the broadcasting licence for the undertaking.

Expectation

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

Appendix 2 to Broadcasting Decision CRTC 2018-240

Terms, conditions of licence and expectation for the English-language commercial radio programming undertaking CKEZ-FM New Glasgow, Nova Scotia

Terms

The licence will expire 31 August 2023.

Conditions of licence

1. The licensee shall adhere 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, as well as to the conditions set out in the broadcasting licence for the undertaking.
2. As an exception to the percentage of Canadian musical selections set out in section 2.2(8) of the *Radio Regulations, 1986* (the Regulations), the licensee shall devote at least 40% of its musical selections from content category 2 (Popular Music) in each broadcast week to Canadian selections broadcast in their entirety.

For the purposes of this condition, the terms “broadcast week,” “Canadian selection,” “content category” and “musical selection” shall have the same meanings as set out in the Regulations.

3. To fulfill the outstanding commitments to Canadian content development (CCD) set out in the appendix to *English-language FM radio station in New Glasgow/Pictou County*, Broadcasting Decision CRTC 2012-278, 9 May 2012, the licensee shall make equal annual contributions of \$5,000 by the end of the 2018-2019, 2019-2020 and 2020-2021 broadcast years. These contributions are in addition to the basic annual contributions to CCD required under section 15 of the *Radio Regulations, 1986*. Of these amounts, at least 20% per broadcast year shall be allocated to FACTOR or MUSICACTION. The remainder shall be allocated to parties and initiatives fulfilling the definition of eligible initiatives set out in paragraph 108 of *Commercial Radio Policy*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006. The licensee shall file supporting documentation, including sufficient proof of payment and eligibility, with the Commission by no later than 30 November for each broadcast year.
4. In addition to the required basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986* and the amounts set out in condition of licence 3 above and condition of licence 5 below, the licensee shall make a CCD contribution of \$2,100 to FACTOR or MUSICACTION by no later than 31 August 2019. The licensee shall file supporting documentation, including sufficient proof of payment, with the Commission by no later than 30 November 2019.

5. In addition to the required basic annual contribution to Canadian content development (CCD) set out in section 15 of the *Radio Regulations, 1986* and the amounts set out in conditions of licence 3 and 4 above, the licensee shall make a CCD contribution of \$3,117 by no later than 31 August 2019. Of this amount, at least 45% must be allocated to FACTOR or MUSICACTION and at least 15% must be allocated to the Community Radio Fund of Canada. The remainder 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. The licensee shall file supporting documentation, including sufficient proof of payment and eligibility, with the Commission by no later than 30 November 2019.

Expectation

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