



May 13, 2004

Canadian  
Association of  
Broadcasters

L'Association  
canadienne des  
radiodiffuseurs

Ms. Diane Rhéaume  
Secretary-General  
CRTC  
Ottawa ON  
K1A 0N2

Dear Mme. Rhéaume,

**Subject: Intervention by the CAB to Items 1 to 9 of Notice of Public Hearing  
CRTC 2004-3, applications for renewal of the licences of radio stations  
CJLB-FM, CKPR and CJSD-FM of Thunder Bay Ontario, CHTN,  
CFCY and CHLQ-FM of Charlottetown, PEI, CHNO-FM, CJMX-FM,  
CJRQ-FM and CIGM of Sudbury, Ontario, and CIEZ-FM, CFRQ-FM,  
CFDR, CJCH and CIOO-FM of Halifax, Nova Scotia**

- 1) The Canadian Association of Broadcasters (CAB), as representative of the vast majority of Canadian broadcasters – including private television and radio stations, and networks, and specialty television services – is pleased to have this opportunity to provide its comments with respect to the above-noted matter.
- 2) The Association wishes to intervene in **support** of the renewal of the licences of these stations for a full 7-year term. It also wishes to **comment** on the Commission's statement in the Preamble to the items in which it indicates:

The Commission may also choose to investigate the possibility of imposing conditions of licence in accordance with Section 11.1 of the *Radio Regulations, 1986* for the purpose of permitting licensees to operate under certain business arrangements.

- 3) A review of the application files indicates that all of the stations have met their obligations over the licence term and that none are asking for amendments to their conditions of licence. The reason for their appearance at the hearing is to discuss the nature of certain commercial arrangements that they have entered into in the past. There is however no CRTC policy that requires pre-approval of such arrangements other than if they constitute an LMA and even then the Commission has indicated that it may approve such agreements in the future.

## **LMAs and Commercial Arrangements between Broadcasters**

- 4) The first Local Management Agreements were first put into place in the early 1990s. These were the result of the difficult financial strains that the radio industry found itself in at that time. The CRTC Annual Returns show that in 1993:
  - The radio industry as a whole posted a PBIT margin of – 0.3% and a pre-tax profit margin of – 3.72%.
  - The AM radio industry as a whole posted a PBIT margin of – 11.49% and a pre-tax profit margin of – 16.83%.
  - The picture was a bit better for FM radio but certainly not attractive to investors with a PBIT margin of 11.86% and a pre-tax profit margin of 4.07%.
- 5) A good part of radio's profit problem was its weakness in attracting revenues in competition with other media. Whereas a buyer could reach a reasonably broad demographic target with a newspaper, billboard or television purchase, it was necessary to buy multiple radio stations from multiple owners in order to reach the same broad audience. Radio's share of the total advertising pie was much smaller than any of these media. At the same time, rather than selling against these other media, radio stations were fighting it out on the street against each other for a piece of a relatively small pie.
- 6) In that context and with the limit of two stations in the same language in the same market, with only one on either AM or FM, the ability to achieve synergies in operating costs was not available to most broadcasters.
- 7) In a variety of communities across the country, broadcasters realized that they might be able to deal with both of these problems by joining forces with the competitor, they might be able to reduce some administrative and back office costs, including rent, reception, technical expenses, some managerial costs and sales management while being able to present a more complete sales picture to advertisers. This was the genesis of the Local Management Agreement or LMA.
- 8) The Commission expressed some concern that such agreements could result in licensees giving up control of their undertakings or in a reduction of the editorial voices in a market. But it did not require broadcasters to apply for approval of LMAs. Nonetheless, most broadcasters involved in such arrangements met with Commission staff to ensure that the agreements signed were in keeping with the Commission's concerns.
- 9) When the Commission issued its Commercial Radio Policy in 1998, it permitted broadcasters to own up to three or four stations in one language in one market, including the possibility of two on either the AM or FM band or both, depending on the market's size. This change in policy and the subsequent transaction and licensing of new stations permitted individual broadcasters to create the critical mass in some markets to be an effective challenge to other media and to control costs so that profits increased.

- 10) In the 1998 Policy the Commission indicated that with the new ownership policy in place, it was not convinced that LMAs were required to the same extent and called for comments on a proposed policy regarding LMAs. In the resulting policy, outlined in Public Notice 1999-176, the Commission stated

The Commission continues to consider LMAs to be appropriate tools for radio broadcasters, offering an alternative business model that provides flexibility and creates opportunities for economies of scale

- 11) However, it also adopted regulations requiring broadcasters to apply for a condition of licence to permit the operation of an LMA. In general, it indicated that such applications must meet a number of guidelines:

- Parties to an LMA must ensure that distinct and separate programming and news services are maintained, and that their management remains under the respective responsibility of each licensee. This includes the program director and the news director, as well as any other related staff assigned to programming and/or news activities; and
- All assets of the undertakings involved in an LMA must remain in the ownership of each respective licensee.

- 12) It further indicated that it would generally approve such applications where the LMAs:

- Include unprofitable stations;
- Include a number of stations that does not exceed the number of undertakings that may be commonly owned under the ownership policy.
  - Here it noted that it would allow exceptions when it could be demonstrated that the LMA is in the public interest and that it does not create a situation of inequity within the market
- Are limited to a specific term and represent a temporary alternative business model that will allow the broadcasters to improve their performance.

- 13) Finally, the Commission indicated its concern that the increased market power that results from LMAs could have a negative impact on the ability of the other stations in the market or of new entrants to meet their broadcasting obligations. The CAB would note that in many cases broadcasters have wound up their LMAs. At this hearing, the broadcasters in Charlottetown, P.E.I. have indicated they wish to terminate their LMA and in only one case, Thunder Bay, have the broadcasters involved requested a continuation.

### **Local Sales Agreements**

- 14) In response to the increasing convergence and consolidation in both the print and television markets, some radio broadcasters in different markets have entered commercial arrangements known as Local Sales Agreements (LSA). These agreements generally permit two or more

broadcasters to have one of them act as a sales agent for the other stations in the group. When meeting with local advertisers, the resulting sales team is empowered to offer access to the commercial time of all the stations in the group. Clients are free to purchase one, several or all of the stations in the group. No control over the operations of the stations involved is ceded to the sales agent.

- 15) These arrangements are similar to the services provided by the national representation houses that group large groups of stations for purpose of national sales. Rather than each station or ownership group hiring sales people in the major national sales centres of Toronto, Montreal and Vancouver, they ask the rep houses to undertake this sales task for them. It is not uncommon for a rep house to represent a number of competing radio stations from the same market.
- 16) This practice has been in existence for most of the existence of private radio. It should also be pointed out that the Commission has never considered such arrangements problematic in the past. Therefore, the CAB does not believe that the commercial arrangements for local sales present any different problem. Accordingly, the CAB does not consider that it is appropriate for the Commission to regulate LSAs unless it is proven that such agreements would have a negative impact on the ability of the other stations in the market or of new entrants to meet their broadcasting obligations.

### **The present review**

- 17) The CAB is greatly concerned that the Commission has made the renewal of these 15 radio stations into a potential review of policy regarding commercial arrangements between broadcasters. In the preamble to the applications, the Commission indicated that it 'may also choose to investigate the possibility of imposing conditions of licence in accordance with Section 11.1 of the *Radio Regulations, 1986* for the purpose of permitting licensees to operate under certain business arrangements."
- 18) The CAB does not believe that it is appropriate to develop an ad hoc policy regarding commercial arrangements between broadcasters at a licensing hearing to renew the licences of some local radio stations. While the Commission may not intend to issue a general policy, its decisions regarding the appropriateness of such arrangements in effect could result in de facto policy making.
- 19) This raises two concerns:
- Should a policy review take place without the input of all stakeholders, including other broadcasters not in these markets, advertisers and other interested parties?
  - Should a single hearing panel make a policy determination rather than such a determination being made by the Commission as a whole as is the usual practice?

- 20) The Association does not dispute that the Commission might wish to interpret its existing LMA policy adopted after a public process. It is certainly not policy making to review the continuation of existing LMAs as outlined in Public Notice 1999-176. But if the Commission wishes to review the appropriateness of Local Sales Agreements or other commercial arrangements that have been hitherto considered business arrangements, we believe that it would be more appropriate to do so in the context of a policy related Public Notice, allowing for public comment from all interested parties. The Commission's usual practice in such a case is to ask for comments on the aspects that are of concern, without limiting comment to its questions.
- 21) The CAB would welcome such a review and suggests that as an alternative, the Commission might wish to review these issues as part of its review of the Commercial Radio Policy.
- 22) The CAB does not wish to appear at the June 7 Public Hearing.
- 23) Copies of this intervention have been provided to each applicant at the e-mail address provided in the Notice of Public Hearing.

Yours truly,



Glenn O'Farrell  
President & CEO

c.c.: David Murray, NewCap Broadcasting [dmurray@ncc.ca](mailto:dmurray@ncc.ca)  
K. Klein, C.J.S.D. Incorporated [kklein@dougallmedia.com](mailto:kklein@dougallmedia.com)  
Merv Russell, Maritime Broadcasting System [mrussell@mbsradio.com](mailto:mrussell@mbsradio.com)  
Alain Strati, Rogers Broadcasting Ltd. [astrati@rci.rogers.com](mailto:astrati@rci.rogers.com)  
David Murray, Sun Radio Ltd. [dmurray@ncc.ca](mailto:dmurray@ncc.ca)  
Scott Bodnarchuk, CHUM Ltd. [sbodnarc@mrg.ca](mailto:sbodnarc@mrg.ca)