



**Friends of Canadian
Broadcasting**

**FRIENDS' reply on the commercial
radio policy framework review**

APRIL 29, 2021

April 28, 2021

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Re: Reply Comments – Broadcasting Notice of Consultation CRTC 2020-374 (Notice) – Commercial radio policy framework review

Dear Mr. Doucet,

1. FRIENDS of Canadian Broadcasting (FRIENDS) is pleased to provide these reply comments in respect of the Commission's proceeding on the policy framework for commercial radio. Based on the record of the proceeding, FRIENDS is satisfied that (1) permitting greater common ownership in local radio would be an appropriate means by which the CRTC can provide regulatory relief for commercial radio, so long as the quid quo pro is increased investment in local news and information for Canadians, (2) slightly greater flexibility for commercial radio in Canadian content obligations, and a reorientation towards support of emerging and Indigenous artists, is appropriate, and (3) looking to online providers to contribute to the funding of news and information and provide greater support for Canadian music and artists must become an immediate priority.

Private radio's financial situation cannot be ignored

2. The Broadcasting Act requires private programming undertakings to "contribute significantly to the creation and presentation of Canadian programming" and "be responsive to the evolving demands of the public" "to an extent consistent with the financial and other resources available to them".
3. In our intervention, we observed that CRTC financial statistics show a larger radio group revenue decline of 27% from 2019 to 2020 and that "there is every indication that digital platforms did not suffer as much through COVID-19 as traditional media, so the assumption that things will bounce back for radio is perhaps not a wise one."¹ Based on these CRTC statistics, industry polling and sales tracking, the Canadian Association of Broadcasters (CAB) estimates reductions in revenues of 27.3% from 2019 to 2020, total pre-pandemic declines of 16.5% from 2013 and February 2020, and 22% revenue declines post-pandemic (to end 2021).² The CAB argues that revenues will not return to pre-pandemic levels, and that by

¹ It is unclear to FRIENDS why the Commission did not choose to fast-track the release of full 2020 commercial radio financial summaries (as the CRTC did for CBC financial data for the CBC renewal proceeding) given its evident relevance to this proceeding.

² CAB Intervention, paragraphs 10, 45, per *The Crisis in Canadian Media and the Future of Local Broadcasting*, Communications Management Inc. (CMI), August 24, 2020.

2029 they will be down 28.5% from 2019 levels.³ Given the steady transfer over the past fifteen years of revenue from traditional media that produce valued content to online platforms that are highly profitable and often produce none,⁴ and the Commission's own 2018 projections,⁵ the CAB's projections do not appear to be an unreasonable.

4. Private radio's less-than-rosy financial picture has consequences for Canada. There may be little the Commission can do that would positively affect private radio revenues, but the decisions it makes in this proceeding could have a significant effect on private radio's viability. Further, commercial radio is not in a position to absorb increased overall regulatory obligations, but decreased obligations would also be harmful. We must strike an appropriate balance. Finally, private radio's ongoing support for the public policy objectives commercial radio itself advances (local news, Canadian music) must be complemented by contributions from other players in the system, whom the CRTC continues to exempt without merit.
5. In respect of the third consequence, the Commission's options may appear limited,⁶ but, in reality, they are only limited by the Commission's unwillingness to rise to the occasion.

The Commission must regulate online providers now

6. The ongoing relevance of commercial radio, echoed in the CRTC's and CAB's research, is also evidenced by the calls from intervenors for private radio to do more, including providing greater support for emerging, Indigenous and black artists.
7. These are genuinely important objectives. But for the Commission to enact additional obligations for commercial radio, while continuing to leave online competitors unregulated, would be nonsensical.
8. In his appearance before the Standing Committee of Canadian Heritage on Bill C-10, Chairman Scott made it clear that the Commission continues to believe it has jurisdiction over online providers, but supported the Bill for the clarity it brings to the Commission's powers and tools. The Chairman was careful not to say that the Commission's ability to act was dependent on the passage of Bill C-10, because it does not.
9. FRIENDS is aware that the Commission is already ramping up in anticipation of the potential passage of Bill-10 and a nine-month timeline to regulate online platforms. Speculation about a late summer/early fall election suggests, however, that the Commission may not be able to wait for government to intervene. Instead, it falls to the Commission to exercise its independ-

³ Ibid, paragraph 47.

⁴ A recent UK study, that demonstrates the remarkable growth in revenue and profitability of Google and Facebook, can be found here: https://assets.publishing.service.gov.uk/media/5fe4951c8fa8f56af8e88105/Appendix_D_Profitability_of_Google_and_Facebook_non-confidential_WEB.pdf. Google and Facebook are expected to report earnings shortly; the numbers are likely to be sky high.

⁵ Noted at CAB Intervention, para 42.

⁶ For example, as we noted in our Intervention unlike in the case of local TV six years ago, there is currently no regulated distributor (equivalent to a BDU) that the Commission can tap to support private radio stations.

ence to regulate in the national interest, ideally now, lest we lose another decade and hundreds local media outlets to the collective inaction of the Commission and the government.

10. The Commission was created as an independent body precisely because Parliament should not be micromanaging the regulation of Canada's broadcasting and communications systems. In practice, this means that Parliament's inaction, which is beyond disappointing, is no barrier to the Commission doing what it must, all of which is permissible under existing law. While a nice, even useful formality, Bill C-10 is not needed to provide the Commission with any "cover" to do its job. FRIENDS would like nothing more than to witness the CRTC offer proof of life for its notional independence. The best time to do that was yesterday. The next best option is to act today.

The quid quo pro for ownership consolidation

11. In its intervention, the CAB argues that "while still ensuring radio remains the most diversely owned and operated local medium in Canada, [greater station ownership at the local market level] would help radio operators to recover from severe revenue declines, and navigate future anticipated declines, while ensuring programming diversity and enhancing their ability to offer locally-relevant news and information." The CAB also points to CRTC data to the effect that, prior to the pandemic, revenue declines had been managed by trimming non-programming expenditures but that, post the pandemic, programming expenditures were suffering.⁷
12. The CAB's proposal for a new common ownership policy is that "band restrictions" (specific AM & FM station limits) be eliminated and the limit for markets with eight or fewer stations be raised to four radio stations; for markets with nine to 16 stations, the limit be six stations, or a maximum of half the stations in the market, whichever is lower; and for markets with 16 stations or more, the limit be eight. Bell Media argues that the current common ownership policy "should be eliminated in its entirety," whereas some smaller broadcasters recommend a limit of three stations in smaller markets.
13. In effect, the private radio industry's argument for changes to the Commission's common ownership policy (COP) is that revenue reductions demand cost reductions, and through greater local ownership, those cost reductions can be directed to administrative or non-programming functions, rather than local programming.
14. While this argument may be mathematically sound, it also carries great risk for the public interest. While the CAB argues that broadcasters have demonstrated through the pandemic their desire to do as much local programming local news as possible, elsewhere in its submission, the CAB states that "in-depth local news and information programming is essentially no longer viable on radio without support."⁸
15. Thus, the potential for greater local consolidation to result in reductions in local programming including local news cannot be dismissed. Instead of eight stations in Toronto being operated by two or more operators, with distinct and separate editorial operations, the CAB's proposal would allow one news operation to feed all stations, with a net loss in local voices

⁷ CAB Intervention, paragraph 54 & 209.

⁸ CAB Intervention, paragraphs 53 & 65.

and choices. Moreover, without safeguards as proposed by the Ontario Association of Broadcasters (OAB), competitive balance between operators in smaller markets may be upset, resulting in a loss of local programming diversity.

16. FRIENDS does not object to increased common ownership in all cases, and accepts that as radio increasingly competes with large international conglomerates online, allowing a degree of increased local ownership could result in greater viability and ability to support local programming, provided certain regulations are in place. In order to ensure that the local programming benefits of increased common ownership are realized, FRIENDS submits that:
 1. In the event of acquisitions or station exchanges among larger radio groups, minimum commitments to local news be established; and
 2. Caution be exercised in smaller markets to ensure that any consolidation results in a net benefit.
17. FRIENDS does not profess to have the expertise necessary to propose precise measures in regard to the above, but has no reason to disagree with the views expressed by OAB and smaller broadcasters such as Starboard Communications in respect of the latter issue. We certainly disagree fundamentally with Bell Media's view that all ownership rules should be abolished, as while being in Bell Media's interests, this would clearly not be in the public interest.
18. In respect of FRIENDS' proposed *quid quo pro* for larger broadcasters to support local news, we believe this to be an appropriate way of ensuring that operational savings from modestly increased common ownership do, in fact, get reinvested in local programming, particularly news. We could envisage this being established as a tangible benefit that groups would offer in seeking approval of ownership transactions that take advantage of higher common ownership thresholds.
19. We believe a financial commitment to news and information programming, above a historical baseline, would be the most appropriate approach. While exhibition-based commitments could be useful in some circumstances, we accept that different stations in different markets and formats have legitimately different ways of providing news appropriate to their audiences, which argues against standardized hour-based commitments across all stations.
20. Finally, we believe that applying specific commitments only to larger broadcasters is appropriate, given that:
 - Smaller broadcasters living and working in the communities they serve generally have a good record of providing as much local programming, including local news, as they can, since this is their main differentiator versus larger regional and national competitors. They have immediate accountability to the audiences they serve, and no need to meet public stock market profitability expectations. A CRTC expectation that synergies from increased common ownership get reinvested, at least mostly, in local news and information programming, should be a sufficient safeguard, at least until proven otherwise; and
 - Larger broadcasters will be in a position to distribute required benefits of increased local news and information programming to the markets most in need of them. A transaction

in Toronto could potentially lead to increased news in Sudbury. Moreover, group-based expenditure commitments to local news on radio would be consistent with the cross-platform news approach of vertically-integrated broadcasters and could naturally evolve, with current TV local news expenditure commitments, into future cross-platform news commitments (including digital).

Adjusting MAPL to new realities

21. Music Canada, the Canadian Independent Music Association et al (CIMA et al), and the CAB make similar comments on the increasingly international nature of the music industry, and the need to update MAPL as a result:
- CAB proposes that the current four-point MAPL system be retained, but that the Commission adjust the A (Artist) criteria in MAPL to count for 2 points and update the P (performance) criteria in MAPL to include production by a Canadian;
 - Music Canada proposes that MAPL become a six-point system with qualifying Canadian musical selections being those that meet at least 3 out of 6 points, as follows;
 - M&L. Music & lyrics written/composed by Canadians – between 1 and 3 points (at least 25% 1 point, at least 50% 2 points; entirely Canadian 3 points)
 - A. Where the music is, or the lyrics are, performed principally by Canadians – 2 points
 - P. Where a minimum of 50% of the key production elements are carried out in Canada or a Canadian exercises the role of producer or audio engineer – 1 point
 - CIMA et al propose a more extensive revision to the MAPL system with a potential 16 points, of which 6 are needed to qualify as Canadian, and points for Canadian artist OR composer are mandatory. CIMA's proposal includes points for Canadian women, Indigenous and visible minority artists, as well as additional points for Canadian copyright ownership.
22. FRIENDS agrees that, while remaining a solid foundation for the future, that MAPL can be modernized without being diluted. This would both recognize the increasingly international nature of music production and distribution, and provide slightly greater flexibility to Canadian broadcasters in meeting their Canadian content obligations without reducing the prevalence and diversity of Canadian creativity on radio. Some of the additional points advocated by CIMA et al may also be addressable through new credits or incentives.

Supporting Canadian music content

23. In contrast to MAPL, there is little agreement between broadcasters and other intervenors on Cancon levels and how best to support emerging and diverse artists. While the CAB calls for reductions in Canadian content requirements from 35% to 25% and endorses credits to support emerging and diverse artists, Music Canada, CIMA et al, the Black Music Business Collective and Indigenous Music Alliance call for the maintenance of Cancon levels at 35% and ask that specific sub-quotas be introduced for emerging, indigenous and other diverse artists.
24. In support for its position, the CAB has tabled evidence to the effect that “At 35% or more for popular music, Canadian content levels are more than three times reasonable measures of

normal “market” level”.⁹ On the other hand, CIMA et al tabled evidence to the effect that streaming of Black Canadian artists (and songs) is far greater on most streaming services than radio playlists.¹⁰

25. FRIENDS has seen no evidence that current Cancon quotas are harming Canadian private radio stations. In fact, we note that over the last two decades many stations voluntarily offered 40% Cancon levels for popular music.¹¹ The CAB has adduced no evidence to the effect that Canadians are abandoning Canadian radio in favour of streaming services because of high Cancon quotas as opposed to other factors, like personalization and easy access from native apps on mobile devices. Barring such evidence, FRIENDS urges caution, although a nominal reduction, say returning to the 30% as Cancon level in effect before 1999, may be appropriate in some specific cases.

26.

All of which is respectfully submitted.

Sincerely,

A handwritten signature in blue ink that reads "Daniel Bernhard". The signature is written in a cursive, flowing style.

Daniel Bernhard
Executive Director
FRIENDS of Canadian Broadcasting

⁹ CAB Intervention paragraph 119.

¹⁰ CIMA et al Intervention, paragraph 3, Appendix 3.

¹¹ Two such stations, based in Halifax, were recently sold by Evanov to Acadia. <https://crtc.gc.ca/eng/archive/2021/2021-140.htm>