

Canadian Radio-television and Telecommunications Commission

Broadcasting Notice of Consultation CRTC 2017-1

Date of Hearing Appearance: March 28, 2017

Gatineau, Québec

ORAL SUBMISSION OF:

COMMUNITY MEDIA ADVOCACY CENTRE

www.CMACentre.ca

INTRODUCTION

1. Good day Chairman Blais and Commissioners Vennard and MacDonald, Madame Secretary and CRTC staff.
2. Let us acknowledge that we are speaking today on Algonquin territory. It is our collective responsibility as media producers and regulators to acknowledge this history, and for the ongoing struggles of Indigenous peoples to be heard.
3. My name is Zoe Ludski and I've traveled from the territory of the Tla'Amin Nation on the sunshine coast of British Columbia to speak with you today. I am the Vice President and a founding member of the Community Media Advocacy Centre or CMAC, which prioritizes the perspectives, voices and lived experiences of Indigenous Peoples, people of colour, third language and disAbility communities in Media.
4. My name is Laith Marouf and I am an award winning producer in both radio and television. I am also a Senior Consultant with CMAC, which is a non-profit organization that is uniquely comprised of academics, lawyers, policy consultants and experienced community media practitioners. We promote community access and offer advocacy and support to Indigenous and community owned multimedia (radio, television, in print and online).
5. Our intervention on the public record recommends the CRTC award the licenses to the three regional Indigenous broadcasters, WAWATAY, AMMSA and NNB and reject the applications made by FPR and VMS. On that basis, we are here today to reinforce CMAC's original recommendations to the Commission: award the licenses to the three regional Indigenous broadcasters.
6. The Public record supports this recommendation, and we have reviewed all relevant laws and policies, including the Native Broadcasting Policy Public Notice CRTC 1990-

89¹, sections of the 1991 Broadcasting Act², BNC CRTC 2015-399³, all of the applications under Broadcasting Notice of Consultation CRTC 2017-1⁴ and all the public interventions and the replies by the applicants on record. We come in-person today to reinforce CMAC's original recommendations to the Commission.

7. More specifically, our presentation today will focus on four key areas in which the applications of WAWATAY, AMMSA, and NNB clearly surpass those of FPR and VMS in meeting a variety of critical policy objectives, both in broadcasting law and with respect to Indigenous peoples in Canada. They concern: first, sovereignty and the duty to consult; second, station board structure; third, news and language programming; and fourth, education and employment opportunities. We would also like to make the Commission aware that there will be an addendum to our main presentation today, that addresses these proceedings as a whole in context of the Indigenous broadcasting sector across Canada.

SOVEREIGNTY AND CONSULTATION

8. We will begin with sovereignty and the duty to consult. According to the Minister of the Department of Aboriginal Affairs and Northern Development Canada, "The duty to consult is an important part of the federal government's activities, including for regulatory project approvals, licensing and authorization of permits, operational decisions, policy development, negotiations and more."⁵ The updated Guidelines for Aboriginal Consultation and Accommodation reiterate the "common law duty"⁶ to consult Indigenous nations. Such consultation is the only way to ensure valid consent from Indigenous nations, and is even more essential today in context of the Canadian government's ostensible efforts at "reconciliation". Here, the CRTC did not consult with

1 <http://crtc.gc.ca/eng/archive/1990/PB90-89.htm>

2 <http://laws-lois.justice.gc.ca/eng/acts/B-9.01/>

3 <http://www.crtc.gc.ca/eng/archive/2015/2015-399.htm>

4 <http://crtc.gc.ca/eng/archive/2017/2017-1.htm>

5 <https://www.aadnc-aandc.gc.ca/eng/1331832510888/1331832636303>

6 <http://www.aadnc-aandc.gc.ca/eng/1100100014664/1100100014675>

Indigenous nations and representative organizations when it called for license applications, and so the duty to consult was placed on the license applicants. Only certain applicants fulfilled this duty, and the Commission's licensing determinations should reflect that.

9. According to the Policy, the primary factor that determines the legitimacy of an Indigenous broadcaster is consulting with and obtaining the consent of the Indigenous communities in the service zone. The license applications and interventions on record reveal which applicants have received support from Indigenous nations and representative organizations in the service zones and obtained their consent.
10. CMAC has compiled a table of all interventions on the record in support of the applications and it is attached at the end of this presentation as Table 1. This table reveals the degree of consultation and consent obtained by each of the applicants in this proceeding.
 1. Wawatay obtained six letters of support from Indigenous political bodies, including all the major organizations in Ontario: the Union of Ontario Indians Grand Council Chief, Chiefs of Ontario, Ontario Regional Grand Chief, the Grand Council Treaty #3, Nishnawbe Aski Nation Grand Chief and Shibogama First Nations Council. Wawatay's applications demonstrate consultation and consent among Indigenous nations and representative organizations in their proposed service zones.
 2. AMMSA obtained three letters of support from Indigenous political bodies including Stoney Tribal Administration and the AFN National Chief for their proposed service in Calgary and Edmonton.
 3. NNB has supporting interventions from eight Indigenous political bodies, including three Indigenous reserves within the proposed broadcast zone: Musqueam Indian Band, Squamish Nation and Tsleil-Waututh Nation.

4. FPR did not receive letters of support from any Indigenous political body in its proposed service zones. The sole exception was from the Metis Settlements General Council, a national association, and this Council submitted a letter of general support for **all** of the applicants, including Wawatay, AMMSA, NNB and VMS.
11. As evident by the interventions from Indigenous political bodies, the regional Indigenous broadcasters (Wawatay, AMMSA and NNB) have consulted with and received the consent of their nations and representative Indigenous organizations; while FPR did neither. Thus, if the Commission is to uphold the right of Indigenous people to meaningful consultation, the applications of Wawatay, AMMSA and NNB must prevail.

BOARD STRUCTURES

12. After mandating consultation and consent, the “Native Broadcasting Policy” sets markers that define what constitutes a “Native Undertaking.” We quote the Commission in their recent Decision CRTC 2017-78⁷ to license Gimaa Giigidoowin Communications:

“According to the Native Policy, a Native undertaking must be owned and controlled by a not-for-profit organization whose structure provides for board membership by the Native population of the region served. ... [T]he Commission also takes into account a wide set of factors reflected in the Act, including the nature of programming and service to the communities involved, as well as regional, social, cultural, economic and financial considerations.”
13. This decision prioritizes governance practices that are accessible to the Indigenous communities served in the licence zones, and therefore, so must the Commission’s licensing decisions in this proceeding.
14. Among the Indigenous applicants on file under CRTC 2017-1, all are owned or controlled by not-for-profits. Where they differ is on Board representation of the

⁷ <http://www.crtc.gc.ca/eng/archive/2017/2017-78.htm>

Indigenous populations in the proposed license zones. Wawatay has an accessible Board structure with representation from the communities they currently serve in northern Ontario. Their application proposes to add two seats to represent Ottawa and Toronto, if granted licenses for these zones.

15. Both AMMSA and NNB are promising to add seats to represent the Indigenous communities in their proposed license zones. However, both organizations have closed, less accessible Boards. For example, CMAC reviewed one licence application that stated the terms for their Board of Directors are “Permanent” appointments. It is incumbent upon the Commission to explore more deeply during this hearing the different governance structures proposed by the applicants.
16. CMAC recommends that the Commission condition any license issued to AMMSA or NNB to require changes to bylaws and board structures that guarantee more representative and accessible governance for the Indigenous nations in the license zones, including how Programming Advisory Committees will relate with governance.
17. CMAC finds the proposed board structure of FPR fails to achieve the minimum standards outlined in the Policy. The proposed FPR Board would reserve three seats for senior APTN staff and four seats for APTN members. However, only those who sit on the APTN board of directors are considered APTN members.
18. Three problems arise from this governance structure: First, FPR proposes to serve five zones; however, they only designate four seats to possibly represent Indigenous communities. One city will always be left out of representation on the Board of FPR.
19. Second, only APTN Board members can be appointed to the FPR board, and some proposed service zones such as Ottawa lack APTN board members. Moreover, given that the APTN Board member from Edmonton is Bert Crowfoot, the CEO of AMMSA, the current competition might hinder FPR’s ability to appoint a representative for that zone.

20. The third problem with FPR's proposed structure is how removed the Board is from the Indigenous community members they purport to serve. CMAC believes that sustainable organizations involve engaged community members who see themselves as key stakeholders in a community asset. As proposed, FPR board members are appointed by the APTN Board, whose members in turn are appointed by regional Indigenous broadcasting societies. The only chance an Indigenous community member has to participate in the governance of FPR is at the Annual General Assemblies of their regional Indigenous broadcaster.

PROGRAMMING: NEWS & LANGUAGE

21. Section 2 of the Native Broadcasting Policy affirms that broadcasters have a "distinct role" in promoting the development of Indigenous cultures and preserving Indigenous languages. This follows the 1991 Broadcasting Act, which prioritizes reflecting Indigenous peoples in programming and employment, while mandating for them a "special place" in the broadcasting system. To reiterate the Gimaa Giigidoowin Communications decision above, the Commission must take into account factors such as, in particular, the nature of programming and service to the communities involved. In applying the Policy and the Act, this recent ruling prioritizes the nature of programming and services provided to the community when judging the merits of the proposed "Native Undertaking." Assessing each of the applicant's commitment to Indigenous programming and languages demonstrates that, in keeping with this policy, the Commission should grant a license to Wawatay and conditionally grant licenses to AMMSA and NNB.

22. CMAC has categorized the programming proposed by the four Indigenous applicants, appended as Table 2 at the end of our presentation. This table shows that Wawatay is committing to the highest percentage of programming in Indigenous languages, or 33% of programming broadcast weekly, and news programming at 24.6%. AMMSA is also committing to a high percentage of programming in Indigenous languages, 18.25%, but

offers a very low commitment to news, around 3%. Given AMMSA currently operates a predominantly music station in Edmonton and is seeking to hold a second license in the market, CMAC recommends any licenses issued to AMMSA include a condition of higher quotas of news programming.

23. NNB offers the lowest amount of programming in Indigenous languages, 2%, and a low commitment to news programming, 5.4%. CMAC recommends that the Commission condition any licenses issued to NNB with higher Indigenous language and News programming quotas.

24. FPR commits to only 7% Indigenous language programming after three years and 4.8% News programming, despite the fact that a market study commissioned by FPR/APTN (submitted in their Appendices to their Supplementary Brief)⁸ indicates 83% of Indigenous audiences prefer news programming. In its application, FPR also merges the programming categories for News and Spoken Word, to project a higher quota of "News". This is problematic. In fact, a closer look at Table 2 (below) shows that FPR, of all applicants, is committing to the lowest percentages for both Spoken Word and News programming. Furthermore, when the numbers are actually calculated, FPR's commitment to Indigenous Music works out to a 35% commitment to CanCon - 25% of that percentage would be designated for Indigenous Music which totals a commitment to only 7% of broadcast hours for Indigenous Music.

EDUCATION AND EMPLOYMENT OPPORTUNITIES

25. As stated above, the *Broadcasting Act* provides for reflection of Indigenous Peoples in both programming and employment in the Broadcasting System. For Indigenous communities, many barriers exist beyond mere availability of jobs.⁹ Added barriers include obtaining the training and certification to qualify, frequently requiring moving to

⁸ See Section 10, Figures 35 & 36, page 55 of the Strategic Inc. market study commissioned by FPR/APTN in DM#2515477 - 2016-0033-8 - APP - Doc3 - Appendix 1A continued - Appendices to Supplementary Brief.

⁹ <http://www.socialjustice.org/index.php?page=aboriginal-issues>

an urban centre.¹⁰ Wawatay addresses the needs of Indigenous communities to access training and certification that lead to employment. Five Ontario universities have committed to Wawatay in writing, to design media training programs for Indigenous students: the University of Ottawa, Carleton, York, Ryerson, and Queen's. CMAC believes Wawatay's proposal for media education significantly advances its merits for licensing. Furthermore, once Wawatay is in operation, its training model could be emulated by the other Indigenous broadcasters who are awarded licences under CRTC 2017-1.

CONCLUSION

26. To conclude our main presentation today, we remind the Commission of the obligations determined by the common law duty to consult, the Act, and the Policy. The regional Indigenous networks, Wawatay, AMMSA and NNB, have consulted with their nations and presented the CRTC with letters supporting their applications for the licenses. The Commission must issue the licenses to applicants that have consulted and therefore represent the consent of the Indigenous Peoples in the proposed license zones.
27. Additionally, the Commission is obliged to guarantee these "Native Undertakings" comply with the objectives of the Native Broadcasting Policy, which mandates accessible governing structures for Indigenous community members in the service zones. We support Wawatay's application as well as licensing the new stations proposed by AMMSA and NNB. However, CMAC recommends the Commission require, as conditions of licensing, that AMMSA and NNB amend their the proposed bylaws and board structures to make them more reflective of and accessible to the Indigenous people in their service zones. Further, we recommend conditions for increased levels of Indigenous language and news programming for both AMMSA and NNB.

¹⁰ <http://www.ammsa.com/publications/windspeaker/canada%E2%80%99s-aboriginal-education-crisis-column>

28. The Policy also calls upon the Commission to guarantee that the programming is reflective of the interests and needs of Indigenous communities. Given that the proposed licenses are located in the political and economic capitals of English Canada, CMAC believes the needs and interests of local Indigenous communities cannot be reflected through predominantly music stations. The Commission must set conditions for the licenses under CRTC 2017-1 for 20% minimum commitment to Indigenous languages and news programming.
29. CMAC organized the information provided by the applications into prioritized categories as determined by the obligations under CRTC policies, the Broadcasting Act, and the Calls to Action by the Truth and Reconciliation Commission (TRC). This information is attached at the end of our oral remarks as Table 3. CMAC believes this hearing is an opportunity for the Commission to apply the TRC's Calls to Action¹¹ through a meaningful and tangible act of reconciliation in the public interest. Table 3 and Section 16 of our intervention provide greater details on the TRC's recommendations and their relevance in guiding the outcomes of CRTC 2017-1.

CRTC PROCESS CREATING CONFLICT

30. That concludes our main presentation. At this point, CMAC would like to respectfully address the process we are engaging in today. The Commission decided to post the call for licenses without consulting with Indigenous nations and representative organizations in the proposed service areas. Because of this, the responsibility to consult was delegated to the potential license applicants. As a result, competing licence applications pitted the regional Indigenous broadcasters, Wawatay, AMMSA and NNB, against an organization they helped found, as a means to serve their nations' national public television needs, APTN.

¹¹ See #84-86 (p. 9-10): http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf

31. The current CRTC process has pushed a harmonious Indigenous broadcasting sector, previously working towards the same goals, to compete over the consent of their nations for access to the airwaves--a public good. As we have been reminded by this hearing, Indigenous Peoples never gave up their rights and sovereignty to make use of the electromagnetic spectrum.¹²
32. The competitive license process imposed by the CRTC inherently creates conflict amongst Indigenous broadcasters across this land. This conflict is compounded by a 27 year old Native Broadcasting Policy, too old to address standards and goals set by the Truth and Reconciliation Commission. This highlights the obvious need to review the Native Broadcasting Policy, which we look forward to the Commission doing later this year. Going forward, CMAC believes the CRTC has the legal responsibility to consult Indigenous nations and representative organizations on the shape of the Policy's review process. This will ensure that the review process does not create conflict within the complex Indigenous broadcasting sphere.
33. Thank you for listening and for your work examining our intervention. We look forward to your questions and to continuing the conversation today.

CMAC Seating Plan

Zoe Ludski	Laith Marouf
Commission	

¹² Wawatay (2017). Hearing. See transcript: http://www.crtc.gc.ca/broadcast/eng/hearings/2017/ag27_03.htm & Manuel, N. (2010). Secwepemc Radio: Reclamation of Our Common Property. In A. Langlois, R. Sakolsky & M. van der Zon (Eds.), *Islands of Resistance: Pirate Radio in Canada* (pp. 71-74). Vancouver: New Star Books. Retrieved from: <http://www.newstarbooks.com/pdfs/books/9781554200504-Resistance-web.pdf>.

TABLE 1: Supporting interventions on file under CRTC 2017-1 (*not from licence zone)

	Wawatay	AMMSA	NNB	FPR	VMS
Indigenous political bodies	6	3	8	4	4
	Metis Settlements General Council	Metis Settlements General Council	Metis Settlements General Council	Metis Settlements General Council	Metis Settlements General Council
	Chiefs of Ontario, Ontario Regional Grand Chief	AFN National Chief	Fort Nilson First Nation*	Temagami First Nation (Central Ontario)*	Alderville First Nation, S Ontario*
	Union of Ontario Indians, Grand Council Chief	Stoney Tribal Administration	Kitselas First Nation*	Alderville First Nation (South Ontario)*	Treaty 8 First Nations of Alberta
	Nishnawbe Aski Nation, Grand Chief		Kitsumkalum Indian Band*	Aboriginal Council of Winnipeg (MB)*	Assembly of First Nations - Alberta
	Grand Council Treaty #3		Moricetown First Nation*		
	Shibogama First Nations Council		Musqueam Indian Band		
			Squamish Nation		
			Tsleil-Waututh Nation		
Indigenous Organizations	3	2	6	2	1
	Native Women in the Arts (NWIA)	NNB	AMMSA	First Nations Child and Family Caring Society of Canada (Ottawa)	Stolen Sisters & Brothers Awareness Movement
	Western James Bay Telecom Network	Aksis, Edmonton's Aboriginal Business and Professional Association	Aboriginal Housing Management	INDSPIRE (Toronto)	
	Anishnawbe Health Toronto		Friendship House Association of Prince Rupert		
			Gitmaxmak'ay Nisga'a Society		
			Nisga'a		

			Ts'amiks Vancouver Society		
			Vancouver Aboriginal Friendship Centre		
Indigenous Business	0	2	0	4	0
		Urban Indian Productions Inc (UIP)		2Ro Media Inc. (BC)	
		Naato'si Design & consulting Ltd.		Prairie Dog Film + Television (AB)	
				Reluctant Cowboy Music (AB)	
				Aboriginal Music Manitoba Inc	
Federal representatives	0	1	0	0	2
		Valerie Kaufman, Senior Manager of Aboriginal programs for the Federal Department of Canadian Heritage (PCH)			Matt Jeneroux, MP - Edmonton Riverbend
					Darshan Kang, MP Calgary Skyview
Provincial representatives	0	0	2	2	2
			Doug Donaldson MLA-Stikine	Nathalie Des Rosiers MPP Ottawa-Vanier	Rod Loyola, MLA - Edmonton-Ellerslie
			Jennifer Rice, MLA North Coast	Yasir Naqvi, MPP Ottawa-Centre	Denise Woollard, MLA - Edmonton-Mill Creek
Municipal representatives	0	2	3	0	1
		Mayor of Edmonton	Mayor of Chilliwack		MOHINDER BANGA, City Councillor - Edmonton - Ward

					12
		Mayor of Calgary	Mayor of Terrace		
			Mayor of Langley		
Educational institution	6	1	1	1	0
School of Journalism and Communication Carleton University		Blue Quills University	Museum of Anthropology UBC	Université Saint-Paul University	
York University - Department of Communication Studies					
University of Ottawa - Department of Communication					
Glendon College, York University					
Aboriginal and Indigenous Studies & Global Development Studies, Queen's University					
Aboriginal Education Council, Ryerson University					
Community organizations	3	2	2	5	3
Community Media Advocacy Centre (CMAC)		Community Media Advocacy Centre (CMAC)	Community Media Advocacy Centre (CMAC)	Challenge for Change	Elizabeth Fry Society of Calgary
Equitable Education		Atelier Culturati	Big Brothers of Greater Vancouver	Canadian Journalists for Free Expression	CKUA Radio Network
Aboriginal Issues Working Group of the Church of				Parent Support Services Society of BC	Drug Awareness Foundation Calgary

	the Redeemer				
				BROADWAY NEIGHBOURHOOD CENTRE (MB	
				Manitobans for Human Rights	
Businesses	0	7	0	1	30
		Genevieve Fisher Management		Ethnic Channels Group Limited (Markham , ON)	30 various local businesses
		Lauren Tutty Promotions			
		Music Solutions			
		Martineau Consulting			
		Kennedy Artist Promotions			
		Stark Ravings Management Inc.			
		Deborah Wood Publicity			
Citizens-at-Large	24	27	22	113	33
Indigenous Citizens-at-large	2	7	1	7	
Indigenous Artists	0	6	0	0	0
		Stephanie Harpe Experience			
		Jamie Woodfin			
		Ira Provost			
		Genevieve Fisher			
		Chris Henderson			
		Buffy Sainte-Marie			
Total Representative	18 (6/station)	20 (10/station)	22/station	19 (3.8/station)	43 (21.5/station)

& Organizational Support					
Total Individual Support	26 (13/station)	40 (20/station)	23/station	120 (20/station)	33 (16.5/station)
Total Interventions Supporting	44 (22/station)	60 (30/station)	45/station	139 (27.8/station)	76 (38/station)

TABLE 2: Programming proposed under CRTC 2017-1 (data before modification in parentheses and all data in HH:MM format)

	Wawatay		AMMSA		NNB	FPR
<i>Programming by language</i>	Ottawa	Toronto	Calgary	Edmonton	Vancouver	5 cities
English	42:00	84:00	(6:00) 104:00	(6:00) 103:00	123:30	(122:00) ??
French	42:00	0:00	0:00	0:00	0:00	0:00
Indigenous	42:00	42:00	(3:00) 22:00	(3:00) 23:00	2:30	(4:00) 9:00
Total	126:00	126:00	(9:00) 126:00	(9:00) 126:00	126:00	126:00
<i>Local programming</i>	Ottawa	Toronto	Calgary	Edmonton	Vancouver	5 cities
English	21:00	41:30	(96:30) ??	(96:30) ??	123:00	(89:00) 84:15
French	20:30	0:00	0:00	0:00	0:00	0:00
Indigenous	21:30	21:30	(19:00) ??	(19:00) ??	2:30	(4:00 by year 7) 5:00 by year 3
Total	63:00	63:00	(115:30) 117:30	(115:30) 120:00	126:00	(93:00) 89:15
Wrap-around programming	63:00		(5:00) 8:30	(13:00) 6:00	(0:00)	(48:00) 36:45
<i>Programming Categories</i>	Ottawa	Toronto	Calgary	Edmonton	Vancouver	5 cities
News	31:00		3:48	(4:00) 4:25	6:45	6:00
% of News	24.6%		3%	3.4%	5.37%	4.8%
Other Talk	41:30		10:00	(10:00) ??	6:30	1:27
Religious	3:30		2:30	0:00	0:00	0:00
Public Affairs	7:30		31:30	(2:30) ??	6:15	11:55
Educational	12:00		2:00	(2:00) ??	5:30	4:00
Children's / Youth	12:30		0:00	0:00	0:00	0:00
% of Spoken Word	61.1%		36.5%	11.5%	14.48%	13.9%
Pop, Rock & Dance Music	10:00		9:00	(94:30) ??	(48:00) 61:00	102:28
Country Music	2:00		63:12	0:00	(0:00) 0:30	
Other Music	6:00		4:00	(14:00) ??	(32:00)	

				39:30	
% of Music	14.3%	60.5%	85.1%	80.15%	81.3%
TOTAL	126:00	126:00	126:00	(105:00) 126:00	126:00
	<i>Wawatay</i>	<i>AMMSA</i>		<i>NNB</i>	<i>FPR</i>

TABLE 3: Obligations and proposed applications under CRTC 2017-1

	<i>Wawatay</i>	<i>AMMSA</i>	<i>NNB</i>	<i>FPR</i>
Indigenous Nations Official Support	Yes	Yes	Yes	No
Indigenous Owned	Yes	Yes	Yes	Yes
Open BoD	Yes	No	No	No
Educational Opportunities	Yes	No	No	No
Employment opportunities	High	Medium	Medium	Low
Language Programming	33%	18.25%	2%	7%
News Programming	24.6%	3% and 3.4%	5.4%	4.8%
Spoken Word Programming	61.1%	36.5% and 11.5%	14.48%	13.9%
Music Programming	14.3%	60.5% and 85.1%	80.15%	81.3%

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