



Broadcasting Public Notice CRTC 2008-1

Ottawa, 4 January 2008

Notice of Consultation

Call for comments on the policy regarding the broadcast of hits by FM radio stations

*The Commission calls for comments on its policy regarding the broadcast of hits by commercial FM radio stations. It further seeks comments on the charts used to determine hits for both commercial FM stations and campus stations. The deadline for the receipt of comments is **4 March 2008**.*

Introduction

Regulatory framework

1. The Commission's policies with respect to the broadcast of hits are set out in Public Notice 1997-42 for commercial radio stations, and in Public Notice 2000-12 for campus stations.
2. According to these policies, English-language commercial FM stations must ensure that less than 50% of all musical selections aired during each broadcast week are hits. For English-language campus stations, the level of hits aired during each broadcast week must not exceed 10% of all musical selections in the case of community-based campus stations, and 30% in the case of instructional stations.
3. For English-language commercial FM radio stations other than those serving Montréal and Gatineau-Ottawa, a hit is defined as any musical selection that, up to and including 31 December 1980, reached one of the Top 40 positions in the charts used by the Commission to determine hits.
4. For English-language commercial FM radio stations in Montréal and Gatineau-Ottawa, as well as for campus stations, a hit is defined as any musical selection that, at any time, has reached one of the Top 40 positions in the charts used by the Commission to determine hits.
5. For the latter group of stations, the latest charts used to determine hits are those contained in publications dated up to and including two Saturdays before the date of broadcast. Canadian selections that enter the Top 40 are considered to be non-hits for one year from the date that they first enter the Top 40. For all stations, selections performed and aired live, or contained in a live performance recorded primarily for broadcast, are not considered as hits.

Previous policy reviews

6. The difference in the approach to the broadcast of hits for commercial FM radio stations in Montréal and Gatineau-Ottawa compared to those serving other markets stems from the 1997 policy review that resulted in Public Notice 1997-42. The Commission adopted a less restrictive definition of a hit for commercial FM stations located outside of the Montréal and Gatineau-Ottawa markets in order to permit the development of the “Contemporary Hit Radio” or “Top 40” format on FM and to protect the “Oldies” AM format from direct competition by FM stations. AM music-based stations had generally been losing their audience to the higher-fidelity FM band and were doing very poorly financially. The Oldies format was identified by some broadcasters in 1997 as the one music format that was most suited to the lower-fidelity AM band, and might enable the survival of some AM stations if direct competition by FM stations was not allowed.
7. Accordingly, the definition of a hit was made less restrictive for stations outside Montréal and Gatineau-Ottawa by excluding all selections reaching the Top 40 of selected music charts after 31 December 1980, thereby eliminating most selections played on most stations from consideration as hits.
8. The Commission maintained the use of a stringent definition of a hit to be used by English-language FM commercial radio stations located in the Montréal and Gatineau-Ottawa markets in order to protect French-language commercial FM stations in those markets. French-language broadcasters in these bilingual markets, bound by the continuing requirement to play a minimum level of French-language vocal music, were concerned that the elimination of restrictions on the programming of hits by English-language stations would place them at a severe disadvantage when attempting to retain a high level of tuning by bilingual Francophones.
9. Following a review of the campus radio policy in 2000 that resulted in Public Notice 2000-12, the Commission decided to retain the stringent hits definition for English-language campus stations in order to support their mandate to provide programming that is an alternative to that provided by commercial stations. All restrictions on the use of hits by community stations were lifted in 2000 following a review of the community radio policy that resulted in Public Notice 2000-13.

Current issues

10. The Commission is of the view that restrictions on the broadcast of hits continue to be relevant for English-language campus stations. However, since the Commission issued Public Notice 1997-42, there have been a number of developments that could have implications for the relevance of the policy limiting the broadcast of hits by commercial FM stations. These developments include those set out below.
 - Since 1997, new musical formats have continued to appear on FM, such as the “Bob,” “Jack,” and “Dave” formats, which use hits from a range of eras.

- A decade ago there was hope in the broadcasting industry that digital radio would become established, and music would be broadcast by former analog AM stations in CD-quality audio, eliminating the “audio fidelity gap” with FM. However, the timing and extent of the conversion to digital remains uncertain, particularly with regard to AM radio.
 - Liberalized ownership rules in 1998 permitted the considerable consolidation of ownership of the radio industry that has taken place since, and in recent years the overall financial results for radio have been very positive.
 - Canadian satellite radio undertakings provide a wide variety of music formats to listeners across Canada in both urban and rural areas.
 - At the same time, other new technologies have provided consumers with alternative means of obtaining the music they wish to hear, a process that inevitably will continue.
11. In 1996, there were 21 Oldies stations out of a total of 248 English-language AM stations. Their aggregate PBIT margin (profit before income and taxes as a percentage of total revenue) was -14%, compared to an aggregate margin for all English-language AM stations of -10%. By 2006 there were 19 Oldies stations out of a total of 155 English-language AM stations. Their PBIT margin had deteriorated to -21%, whereas the aggregate margin for all English-language AM stations had improved to +8%.
 12. Twelve of the 19 Oldies stations are owned by the major radio groups identified in Broadcasting Public Notice 2007-122 as having 2006 revenues exceeding than \$50 million. Two of the other Oldies stations are owned by a group which had 2006 revenues exceeding \$20 million.
 13. As well, Public Notice 1997-42 makes reference to several charts to be used to determine hits. The Canadian charts no longer exist. Since it will be necessary for the Commission to continue to use charts to define a hit, at least for campus stations, it proposes to add two new charts to the list of charts used for this purpose. The first is the *Nielsen BDS Country Spins* chart, a chart compiled by monitoring the selections aired by Canada’s largest country music stations. It is published weekly by *Radio & Records* magazine.
 14. The second is the *Canadian Hot 100* chart published weekly by *Billboard* magazine. This chart is compiled using data relating to Canadian radio airplay and to sales of downloaded tracks.
 15. In light of the above, the Commission asks interested parties to comment on whether the policy on the use of hits is still relevant and effective in today’s environment. In particular, the parties are requested to respond to the following questions:

- The policy on the use of hits applicable to all commercial FM stations except those in the Montréal and Gatineau-Ottawa markets is designed to protect Oldies AM stations from direct competition from Oldies FM stations. In today's broadcasting environment, would the removal of this rule have a significant negative effect on Oldies AM stations?
- Many participants in the Commission's 2006 review of radio policies advocated an increase in the exposure, by commercial radio stations, of music by emerging Canadian artists. The Commission has begun to discuss the airplay of such artists with applicants at public hearings. Given this concern, is it appropriate to make the Oldies format available to FM stations, given that it entails no exposure of emerging Canadian artists?
- Many AM Oldies stations have obtained amendments to their licences that permit the broadcast of a minimum level of 30% Canadian musical selections instead of the 35% minimum level required of most stations by regulation. During the 2006 review of radio policies, many parties suggested increases in the regulated level of Canadian musical selections beyond 35%. In light of this concern, should FM stations have the flexibility to adopt the Oldies format, given that it entails the broadcast of a lower level of Canadian musical selections?
- The policy on the use of hits as it applies to commercial FM radio stations serving Montréal and Gatineau-Ottawa protects French-language stations from direct competition from English-language Contemporary Hit or Top 40 radio stations. Is this policy effective in contributing to the attainment of the objectives of the *Broadcasting Act* related to linguistic duality? If yes, are there aspects that should be adjusted?
- Should changes be made to the definition of a hit and how it is applied to commercial FM stations?
- The Commission proposes to add the *Nielsen BDS Country Spins Chart* and the *Billboard Canadian Hot 100 Chart* to the list of charts used to determine hits. Are there other charts that should be added, or are there others that would be more appropriate?

Call for comments

16. The Commission invites interested parties to present their comments on the issues and questions set out in this public notice. The Commission will accept comments that it receives on or before **4 March 2008**.
17. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

Procedure for filing comments

18. Interested parties can file their comments to the Secretary General of the Commission:

- **by using the**
Broadcasting Intervention/Comments Form

OR

- **by mail to**
CRTC, Ottawa, Ontario K1A 0N2

OR

- **by fax at**
819-994-0218

19. Submissions longer than five pages should include a summary.

20. Please number each paragraph of your submission. In addition, please enter the line ***End of document*** following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

Important notice

21. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's Web site at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's Web site. This information includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.

22. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

23. Documents received electronically or otherwise will be put on the Commission's Web site in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.

24. Please note that the information you provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the webpage of this particular public process. As a result, a general search of our Web site with the help of either our own search engine or a third-party search engine will not provide access to the information which was provided as part of this public process.

25. The Commission encourages interested parties to monitor the public examination file and the Commission's Web site for additional information that they may find useful when preparing their comments.

**Examination of public comments and related documents at the following
Commission offices during normal business hours**

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

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Secretary General

Related documents

- *Canadian Association of Broadcasters' Best Practices for Diversity in Private Radio; Reporting requirements on cultural diversity for commercial radio operators*, Broadcasting Public Notice CRTC 2007-122, 2 November 2007
- *Community radio policy*, Public Notice CRTC 2000-13, 28 January 2000
- *Campus radio policy*, Public Notice CRTC 2000-12, 28 January 2000
- *Revised Policy on the Use of Hits by English-Language Radio Stations*, Public Notice CRTC 1997-42, 23 April 1997

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>