



## Broadcasting Notice of Consultation CRTC 2013-572

PDF version

Ottawa, 30 October 2013

### Call for comments on a targeted policy review for the commercial radio sector

*The Commission calls for comments on a targeted review of its policies for commercial radio. Since the last policy review conducted in 2006, the commercial radio sector has remained relatively stable, both financially and in terms of tuning. In light of this, the Commission is of the view that a comprehensive review is not necessary at this time, but that the sector would nevertheless benefit from an update of certain regulatory and policy elements. Accordingly, the Commission seeks comments on the following topics:*

- *the Commission's approach to calls for applications and to small markets;*
- *the processing of applications for the conversion of low-power, unprotected stations to protected status;*
- *the definitions for local and national time sales and the need for a definition for regional advertising;*
- *the possible implementation of HD Radio technology in Canada and the need for a regulatory framework;*
- *the possible adoption of new compliance mechanisms to encourage licensees to comply at all times with regulatory requirements and their conditions of licence; and*
- *a regulatory update of the provisions under which licensees must maintain and submit their logs and records.*

*The deadline for the receipt of interventions is **16 January 2014**, and the deadline for the receipt of replies is **18 March 2014**. Only parties that file interventions in the initial intervention period may file replies. Replies must be limited to matters raised during the intervention period.*

### Policy framework for the commercial radio sector

1. In 2006, the Commission issued the following three main policies with respect to the commercial radio sector:
  - *Commercial Radio Policy 2006, Broadcasting Public Notice 2006-158 (the Commercial Radio Policy)*

- *Revised policy concerning the issuance of calls for radio applications and a new process for applications to serve small markets*, Broadcasting Public Notice 2006-159
  - *Digital radio policy*, Broadcasting Public Notice 2006-160
2. The Commercial Radio Policy serves as a means of implementing the *Broadcasting Act* (the Act), which stipulates that:
- each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;
  - each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources;
  - the Canadian broadcasting system shall be effectively owned and controlled by Canadians;
  - the Canadian broadcasting system should be readily adaptable to scientific and technological change.

## **Overview of the Canadian radio landscape since the 2006 Commercial Radio Policy review**

### **Licensing trends**

3. The period since the last commercial radio policy review in 2006 has seen continued growth in the number of commercial radio stations available to Canadians. Licensing of FM stations has continued to spearhead this growth, with a total of 109 new stations launching on the FM band since 2006. By comparison, the AM band has continued its decline, with the number of stations operating on the band decreasing by 51 since 2006, primarily as a result of the conversion of several stations from AM to FM. As a result, Canada's commercial radio industry has seen a net increase of 58 stations since 2006, bringing the total number of commercial radio stations available to Canadians to 707 in 2012.
4. The English-language sector has been responsible for most of the growth in Canada's commercial radio industry, with a net gain of 54 English-language stations since 2006. The ethnic radio sector has also experienced considerable growth with an increase in the number of stations from 21 to 27 over the period. Conversely, the number of French-language stations has remained relatively stable, recording a modest net decline of two stations over the same period.
5. The extensive licensing that has occurred on the FM band since 2006 has led to congestion within the band in many Canadian markets and, most notably, in large and major markets. It has also resulted in a heightened competitive environment for many Canadian operators who have seen new competitors receiving licences to operate new stations within their markets.

## Other trends

6. In addition to the increased number of radio stations available to Canadians since the last commercial radio policy review in 2006, there has been a proliferation of alternative digital platforms providing audio content that has traditionally been broadcast on radio. Satellite radio has continued to grow in the Canadian market and new technologies have contributed to the birth of online audio services, many of which did not exist in 2006. In addition, the majority of Canada's commercial radio stations are now streamed online.
7. The Commission notes that a number of countries have adopted, or are in the process of evaluating and adopting, more efficient radio technologies, including HD Radio technology. HD Radio uses digital radio technology to, among other things, expand the capacity for additional commercial radio station offerings. HD Radio technology could potentially provide a way to address the issue of spectrum scarcity.
8. Notwithstanding the growing availability of alternative options for consuming audio content, tuning by Canadians to licensed radio services has remained strong. However, in recent years, there is evidence that tuning has come under pressure as the industry has seen a decline in average weekly tuning per capita when examined at the overall market level (persons 12 years of age and older) as well as across all age demographic segments. In markets tracked by the diary system, the number of average weekly hours tuned per capita (persons 12 years of age and over) declined from 17.7 in 2011 to 17.5 in 2012. In the large Canadian markets tracked by PPM<sup>1</sup> (namely, Vancouver, Edmonton, Calgary, Toronto and Montréal) average hours of radio tuned per week was down from 8.3 hours in 2011 to 7.1 hours in 2012.<sup>2</sup>

## The financial performance of the Canadian commercial radio industry

9. Despite the competitive challenges facing the industry, the financial performance of Canada's commercial radio industry has remained relatively stable since the last review of the policy, and the sector is generally in good financial health. Total radio revenues have increased at an average rate of just over 2% per year since 2006. This has contributed to maintaining the healthy profitability of the radio sector, which has reported aggregated annual profit before interest and taxes (PBIT) margins of between 19% and 25% between 2006 and 2012.<sup>3</sup>
10. FM stations have proven to be more profitable than their AM counterparts, the former having consistently reported PBIT margins above 20% between 2006 and 2012, while the latter group has reported profit margins in the 5% to 10% range over the same period.

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<sup>1</sup> The PPM, a pager-sized device that consumers wear throughout the day, is an audience measurement system that tracks what consumers listen to on the radio.

<sup>2</sup> See the Commission's [2013 Communications Monitoring Report](#).

<sup>3</sup> See the Commission's [2013 Communications Monitoring Report](#).

11. The Commission notes that profitability varies depending on market size. Aggregate market profitability for both English- and French-language stations is generally stronger as market size increases, with small markets recording the lowest aggregate profitability (12%) and major markets recording the highest (30%). For their part, medium and large markets recorded aggregate PBIT margins of 16% and 21% respectively.
12. When comparing markets by language, the Commission notes, on an aggregate basis, that English-language radio stations tend to be more profitable than French-language stations. In fact, the combined annual PBIT margins for English-language AM and FM stations have consistently been in the 19% to 23% range between 2006 and 2012. In comparison, French-language stations have reported, on an aggregate basis, PBIT margins in the 12% to 17% range.

### **Objectives of this review**

13. The overview of the commercial radio industry suggests that this sector is in good financial health and has shown resilience over the years. The Commission notes that conventional radio tuning has remained relatively stable over the last seven years, despite audience fragmentation due to the introduction of new technologies and new audio content distribution platforms. Conventional radio endures as it has many features that are appealing to consumers: it is free; its devices are affordable and easily available; it is easy to access content; and content is local and hence more likely to be relevant.
14. The Commission considers that the commercial radio sector continues to make a meaningful contribution to the fulfillment of the objectives of the Act. Therefore, the Commission is of the view that a comprehensive review of the Commercial Radio Policy is not necessary at this time.
15. However, the commercial radio landscape has changed somewhat since 2006. Consequently, the objective of the present proceeding is to review the effectiveness and appropriateness of specific elements of the current regulatory framework for the commercial radio sector. The Commission is of the view that a flexible and up-to-date regulatory framework is key to the fulfillment of the objectives of the Act.
16. In light of the above, the Commission is of the view that this targeted review should address the following specific issues:
  - the Commission's approach to calls for applications and to small markets;
  - the processing of applications for the conversion of low-power, unprotected stations to protected status;
  - the definitions for local and national time sales and the need for a definition for regional advertising;
  - the possible implementation of HD Radio technology in Canada and the need for a regulatory framework;

- the possible adoption of new compliance mechanisms to encourage licensees to comply at all times with regulatory requirements and their conditions of licence, and
- a regulatory update of the provisions under which licensees must maintain and submit their logs and records.

17. The questions have been numbered. The Commission requests that parties copy the questions and provide their responses directly below each question.

## **Commission's approach to calls for applications and to small markets**

### **Background**

18. The Radio Call Policy is set out in Public Notice 1999-111 and Broadcasting Public Notice 2006-159. In Public Notice 1999-111, the Commission indicated that it would assess each application on its own merits and would issue a call for competing applications in those circumstances where it determined that a call was warranted. In Broadcasting Public Notice 2006-159, the Commission reiterated that applications for new radio stations, or for AM to FM conversions, would generally result in a call, with following exceptions:

- proposals with very little or no commercial potential or impact, including some applications for low-power stations;
- proposals to provide the first commercial service in a market;
- proposals by the sole commercial operator in a market to improve service to the market, either through an AM to FM conversion or a new station;
- proposals to provide the first commercial service in the other official language in a market, or to convert the only station in the other official language from AM to FM; and,
- proposals to convert stations from AM to FM in markets with two or fewer commercial operators.

19. Broadcasting Public Notice 2006-159 also sets out a distinct process for applications to serve small markets as follows:

- For small markets (with populations up to 250,000), upon receipt of an application for a new radio station, a preliminary economic assessment of the market's ability to sustain a new radio station is conducted.
- If the assessment reveals that the market in question is unlikely to support the entry of a new station, the applicant is contacted and informed of the results of this preliminary assessment. The applicant then has the opportunity to withdraw its application or to submit additional information within a 10-day period providing evidence of the market's ability to support a new station.

- If, following assessment of this additional information, it is decided that the market in question can support an additional station, the Commission proceeds with the application. If it is determined that the market cannot support an additional station, the application is returned with a letter explaining why.
- If the applicant decides that it still wishes to proceed, it may resubmit the application and the Commission will issue a public notice announcing the receipt of an application for the market, without identifying the applicant, and indicate the Commission's concern about the ability of the market to support a new station. Interested parties, including the applicant, are encouraged to submit additional information that the Commission will take into consideration before making a final determination on whether or not to proceed with a call for applications.
- Subsequent to an analysis of comments received in response to the public notice, if the Commission determines that the market is incapable of supporting a new radio station, the application is returned and a public notice is issued detailing the Commission's conclusions.
- Where the Commission decides not to issue a call based on unfavourable market conditions, the Commission is not generally disposed to accept applications for the market in question for a period of two years from the date of the public notice announcing the Commission's decision.

## **Issues**

### *State of competition in Canadian radio markets relative to market size*

20. The Commission notes that its initial Radio Call Policy set out in Public Notice 1999-111 was implemented more than 14 years ago in a competitive environment that is different from the one that exists today. Since 1999, consistent with the objective set out in Public Notice 1999-111 of encouraging competition and choice in the radio industry, the Commission has proceeded with many new licences in several Canadian markets, which has led to a tighter competitive environment within the majority of Canadian radio markets.
21. In addition, the Commission notes that there are only 16 Canadian Census Metropolitan Areas with populations in excess of 250,000, which means that the vast majority of radio markets in Canada are currently captured by the Commission's policy on radio calls in small markets (Broadcasting Public Notice 2006-159).
22. Moreover, in recognition of the effects of new licensing since 1999 and the tighter competitive reality facing many Canadian markets, both large and small, the Commission has generally proceeded with a market capacity assessment prior to proceeding with the issuance of a call, regardless of market size.
23. In light of this, the Commission considers that a common approach to the issuance of calls for applications irrespective of market size may be more appropriate.

*Spectrum scarcity*

24. Given the number of new stations licensed and the number of conversions from the AM to FM band, the FM band has become highly congested in many Canadian markets. As a result, the optimal use and availability of frequencies have increasingly become considerations when assessing applications to serve a given market. However, the Commission notes that the Radio Call Policy may not adequately reflect the importance placed on these factors.
25. In a market where there is only one known remaining frequency, the Commission has generally proceeded with a market capacity assessment prior to proceeding with the issuance of a call, regardless of the market size. Therefore, in practice, the Commission generally applies the same process for applications for new licences that do not fall under the exceptions to a call for applications.
26. The Commission considers that it may be appropriate to clarify how optimal use of spectrum and spectrum scarcity should factor into the decision to issue a call for applications to serve a market.

*Public consultation during the market assessment process*

27. Presently, the Commission does not formally consult the public when conducting the initial market assessment that could lead to the issuance of a call for radio applications in a given market. However, the Commission considers that it may be beneficial to receive and take into account comments from listeners and other interested persons when it is assessing whether an application to serve a given market should trigger a call.
28. In light of this, the Commission proposes to initiate a public consultation to seek comments on whether it should issue a call for radio applications in a given market. This public consultation could also gauge whether there is interest by other broadcasters to serve that market, or to serve another market using technical parameters that may be incompatible with the proposal; the ability of the market to support a new station; and the availability of other frequencies that could be used to serve that market.
29. **In light of the above, the Commission invites responses to the following questions relating to its proposal for a revised policy on calls for radio applications:**
  - Q1. Should the Commission adopt a common approach to the issuance of a call, irrespective of market size? If not, why?**
  - Q2. Is the Commission's preliminary view on including public consultation in the market assessment process as set out in paragraphs 27 and 28 appropriate?**

**Q3. If the Commission were to hold a public consultation as part of the market assessment process, should the Notice of Consultation contain information on the original application, such as the name of the applicant and the type, nature and technical parameters of the proposed service?**

**Q4. During the market assessment process, should an applicant or intervener be required to provide specific information such as financial or economic data to support claims related to the availability of spectrum? If so, should any of this information be held in confidence by the Commission?**

**Q5. Provided that an applicant does not propose to use one of the last known available frequencies in a given market, would it be appropriate to maintain the exceptions set out in the Broadcasting Public Notice 2006-159 (listed in paragraph 18 above)? Are there any additional criteria that might warrant an exception to the policy? Please provide supporting rationale and evidence.**

**Q6. Currently, if the Commission decides not to issue a call for applications due to unfavourable market conditions, it will generally wait two years before accepting applications for new radio services in that market. Is the two-year wait period still appropriate?**

## **Processing of applications for converting low-power FM stations to protected status**

### **Background**

30. There are approximately 200 licensed originating low-power and very low-power FM radio stations of all types and formats in operation in Canada. The Department of Industry defines a low-power FM station as a transmitter with an effective radiated power (ERP) that does not exceed 50 watts in any direction, for which the 3 mV/m contour does not extend beyond eight kilometres from the transmitting site, and where the maximum antenna height is 60 metres.<sup>4</sup> Low-power stations operate on an unprotected basis, meaning that they must not create interference to regular, protected FM stations nor are they entitled to protection from interference by regular, protected FM stations. Therefore, a low-power station may need to apply for the use of an alternate frequency, or may have to cease broadcasting altogether, if a protected FM station receives approval to use that low-power station's unprotected frequency.
31. The Commission notes that less than 10% of these stations operate under a mainstream commercial format. The majority of the low-power and very low-power commercial FM radio stations provide a niche programming format, such as tourist or specialty radio stations. In most cases, these types of stations have a limited commercial impact.

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<sup>4</sup> See BPR-3 – [Application Procedures and Rules for FM Broadcasting Undertakings](#).

## Issues

32. The Commission's licensing framework does not distinguish between low-power and protected FM radio stations.
33. As set out in Broadcasting Notice of Consultation 2006-159, applications for a broadcasting licence to operate a new low-power station generally do not trigger a call for applications where the proposal involves a limited commercial potential or impact. As a result, a number of new low-power radio services are approved by the Commission without being subject to a competitive entry process into a given market.
34. In addition, if the licensee of a low-power station wishes to apply for protected status to improve its coverage, it must submit an application for a technical amendment (licence amendment) under Part 1 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*.
35. The Commission is of the view that this approach is problematic. From 2008 to 2013, the Commission processed at least 17 applications from 12 different licensees for technical amendments to convert low-power FM commercial radio stations to protected status; approximately 25% of these licensees have applied on multiple occasions to convert the same station to protected status. The Commission denied over half of these applications. The most frequently cited reasons for the denials are the lack of sufficient compelling technical or economic evidence for the change, the economic or technical impact of the change on the incumbent stations, and the need to respect the integrity of the licensing process.
36. Furthermore, the Commission often receives interventions in opposition claiming that such requests circumvent the normal competitive entry process into a given market.
37. The Commission has exempted from licensing requirements and associated regulations a number of low-power radio stations. These include certain types of special events, native, weather and tourist information related radio stations. The Commission was satisfied that the licensing and regulation of these types of low-power radio stations would not result in a significantly greater contribution to the Canadian broadcasting system, and that by operating under the exemption order, these low-power stations would not have an undue impact on the ability of licensed undertakings to fulfill their regulatory requirements.
38. In light of the above, the Commission considers that there are two possible approaches for dealing with low-power, unprotected FM radio stations. The Commission could adopt a more transparent and efficient process for dealing with applications requesting the conversion of low-power FM radio stations to protected status. The Commission could also consider the possibility of exempting additional types of low-power FM radio stations.

39. Based on the foregoing, the Commission invites responses to the following questions related to low-power stations:

**Q7. What would be the benefits and risks associated with the establishment of a process whereby a licensee of a low-power station operating on an unprotected frequency must apply for a new licence if it wished to operate its station on a protected frequency? Should such a process apply to all markets (small, medium and large)?**

**Q8. Would it be appropriate to exempt from licensing all types of commercial low-power stations (e.g., mainstream, specialty, ethnic) in all markets (small, medium and large)? What would be the benefits and the risks of allowing these exemptions?**

## **Local, regional and national advertising**

### **Background**

40. The Commission's current guidelines for defining and categorizing local and national time sales for radio are set out in the *Data Collection – Broadcasting Glossary*, as follows:

- **Local time sales:** Revenue from the sale of air time by local sales representatives, net of advertising agency commissions and trade discounts. Local time sales include the fair market value of bartered contracts, sponsorship, or any other non-monetary transactions. This does not include revenue from infomercials.
- **National time sales:** Revenue for national advertising, net of any advertising agency commissions and trade discounts. National sales are usually commissionable to the station's national sales representative. This does not include revenue from infomercials.

### **Issues**

41. On various occasions, the Commission has fielded questions and concerns regarding a lack of clarity about how it defines local and national advertising. Furthermore, the Commission does not currently have a definition for regional advertising.
42. Existing guidelines define local and national advertising according to the sales method (i.e., via a local or national sales representative). As such, it can be difficult to categorize advertising purchases from businesses and organizations that are "regional" in scope and for which advertising reach and relevance extend beyond local markets. In some cases, such "regional" advertising buys may be considered by some broadcasters as local advertising, while for others, similar buys could be considered as national advertising, depending on the method of purchase.

43. This is of particular concern in the context of enforcing policies and conditions of licence that relate to advertising. For example, certain licensees have conditions of licence that prohibit the solicitation of local advertising in certain markets while others have conditions of licence that limit them to the solicitation of national advertising only. The Commission's policy on local programming also stipulates that commercial FM licensees broadcasting less than one-third local programming must, by condition of licence, refrain from soliciting or accepting local advertising.
44. In addition to the above, a lack of consistency among licensees in the interpretation of the existing guidelines could be detrimental to the comparability of financial information related to revenues collected as part of the annual returns process.
45. **Accordingly, the Commission invites responses to the following questions related to local, regional and national time sales:**
  - Q9. Are the Commission's current definitions for local and national advertising as set out in paragraph 40 still appropriate? If not, explain why these definitions are no longer appropriate and indicate how the current definitions could be revised, including the factors or criteria that should be considered in determining how local and national advertising are defined.**
  - Q10. Is it necessary for the Commission to develop a definition for regional advertising? If so, describe what factors should be considered in the definition and describe how regional time sales can be clearly differentiated from local and national time sales.**

## **Implementation of digital terrestrial technologies, including HD Radio**

### **Background**

46. In Public Notice 1995-184, the Commission initially considered L-band digital radio as a replacement technology for existing analog radio services in the AM and FM bands.
47. In Broadcasting Public Notice 2006-160 (the Digital Radio Policy), the Commission adopted a new service model for L-band digital radio, whereby digital radio licensees are granted a digital radio licence for a seven-year licence term; are free to develop whatever broadcast services they believe will be of greatest interest to the listening public; and are permitted to own or control one L-Band digital radio station for every analog radio station permitted under the Common Ownership Policy.<sup>5</sup>
48. In Broadcasting Public Notice 2008-67, the Commission extended the regulatory framework for FM analog services to licensees operating in the L-Band. The current

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<sup>5</sup> The Common Ownership Policy is set out in Public Notice 1998-41.

definition of a digital radio station in the *Radio Regulations, 1986* (the Regulations) is as follows:

“digital radio station” means a station that broadcasts in the frequency band of 1452 to 1492 MHz (L-band) using a digital transmission system, but does not include a transmitter that only rebroadcasts the radiocommunications of a licensee.

49. The Commission has not renewed any L-Band digital radio licences beyond 2012. The Department of Industry has published a new policy for spectrum use for the L-Band which no longer provides for digital radio services on this band. Since 2012, the radio industry has shown some interest in deploying HD Radio technology, developed by iBiquity Digital Corporation.
50. In HD mode, multiple digital audio signals can be broadcast in addition to the rebroadcast of a station’s analog signal and some enhanced features using the same 200 kHz FM channel. HD Radio technology increases the number of audio distribution channels without requiring the use of additional spectrum bands. As the FM band has become highly congested in most major Canadian markets over the past several years, this technology could represent a way to address the issue of spectrum scarcity.

#### **Issues**

51. HD Radio technology is in the initial stages of deployment in Canada. Corus Entertainment Inc. (Corus) has been testing this technology in Canada for a period of approximately eight months.<sup>6</sup> In August 2013, Corus submitted a report to the Commission detailing its preliminary findings on the use of this technology. The report has been added to the public file of this proceeding.
52. In the past year, the Commission also received two additional requests to operate experimental HD radio stations from Canadian Multicultural Radio (CMR) and Bhupinder Bola, on behalf of a corporation to be incorporated (Bola). Specifically, CMR and Bola have requested to experiment with HD Radio technology using the signals of ethnic radio station CJSB-FM Toronto and the new English-language commercial FM radio station in Markham, Ontario,<sup>7</sup> respectively. In the Digital Radio Policy, the Commission acknowledged the important role that broadcasters play in the development of new technologies and supports innovation to that effect. In light of this, the Commission granted these two licensees temporary authorization, until 31 December 2014, to experiment with HD Radio technology.

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<sup>6</sup> The Commission granted Corus temporary authorization (until 31 December 2013) to operate an experimental HD Radio station using the frequency of its station CING-FM Hamilton as the host analog signal. In addition to broadcasting GPS-related data, Corus currently simulcasts programming broadcast by CING-FM Hamilton in digital mode.

<sup>7</sup> The new station was approved in Broadcasting Decision 2012-487.

The licensees' requests and the Commission's replies are available on the public file of this proceeding.

53. While the Commission notes that there is some interest in using HD Radio technology, it would benefit from knowing more about the possible implementation of HD Radio technology.
54. The current regulatory framework for digital radio stations does not apply to HD Radio technology, which does not use the L-Band spectrum. As a result, the Commission must consider the need to adopt a regulatory framework to allow for the implementation of HD Radio technology. Given that HD Radio technology requires the use of an existing analog signal, the Commission must also consider whether priority should be given to incumbents over new entrants.

**HD Radio technology versus FM subsidiary communications multiplex operation (SCMO) services**

55. Some broadcasters in Canada already make use of a technology similar to HD Radio, albeit in an analog version, by broadcasting additional ethnic, religious or niche programming on the subsidiary communications multiplex operation (SCMO) channel of an FM radio station. The Commission's policy regarding services using the SCMO channel of FM stations is set out in Public Notice 1989-23. SCMO channels are not subject to the Regulations, with one exception. This exception relates to SCMO services that propose to devote more than 15% of the broadcast week to ethnic programs and whose service area would overlap an area already served by a conventional ethnic radio station. In those instances, the Commission would process an application for such a service and may impose specific requirements as conditions of licence.
56. Programming broadcast using either an SCMO channel or HD Radio technology is not accessible with standard radio equipment and requires the use of a special receiver. HD Radio technology is more advantageous than the analog SCMO offering because the digital signal enables the transmission of higher quality audio and supplementary digital data. It should be noted that SCMO and HD Radio technology cannot co-exist on the same channel.
57. **In light of the above, the Commission is studying closely the potential development of HD Radio technology in Canada. The Commission is also considering whether it should develop a regulatory framework related to this technology. The Commission invites responses to the following questions regarding HD Radio and other digital terrestrial technologies:**

**Q11. Is it feasible to deploy HD Radio technology in the Canadian broadcasting system? If so, what would be the potential economic or technical impacts on incumbent stations? Licensees are further requested to comment on their intentions to conduct trials of, or to deploy HD Radio, and to provide their projected timelines.**

- Q12. To what extent are HD Radio receivers available in Canada? What is the consumer demand (actual and forecasted) for digital radio services in Canada?**
- Q13. Would HD Radio technology be suitable for mainstream commercial stations, or would it be better suited to niche formats such as ethnic or specialty programming? Please explain why.**
- Q14. How could HD Radio technology be employed to increase diversity, in light of the FM spectrum congestion?**
- Q15. Should the Commission consider other digital radio technologies for use in the FM or AM bands? If so, briefly describe these other digital technologies and why they should be deployed in Canada.**
- Q16. Should digital radio services be exempted from licensing requirements or should the Commission establish a licensing framework for these services?**
- Q17. If the Commission was to adopt a licensing framework for HD Radio, how similar should it be to the existing policy for SCMO services? What key elements ought to be considered as part of a licensing framework specific to HD Radio technology, and why?**

## **Compliance mechanisms**

### **Commission's current approach to deal with non-compliance**

58. In 2011, the Commission revised its approach to non-compliance by radio stations with the requirements of the Act, the Regulations and their conditions of licence in order to impose sanctions according to the nature of the non-compliance (Broadcasting Information Bulletin 2011-347). Each instance of non-compliance is now evaluated in context and in light of factors such as the quantity, recurrence and the severity of the non-compliance as well as the measures the licensee is taking to rectify the situation. As a result, the Commission generally treats non-compliance in a progressive manner. If the non-compliance is relatively minor or it is the first instance, sanctions are generally focused on improving future performance and ensuring that the licensee understands that enforcement action will be taken if improvements do not occur.
59. Consequences of non-compliance currently include:
- **Calling the licensee to a hearing:** The licensee is required to respond to the Commission's allegations of non-compliance in person.
  - **Issuing a mandatory order following a public hearing:** Section 12 of the Act allows for such an order requiring the licensee to comply with the Act, the Regulations, a condition of licence, or any decision or order of the Commission.

- **Enforcing a mandatory order in a Federal Court:** By making a mandatory order an order of a Federal Court, violation of the order becomes punishable as contempt of court, which can result in a fine.
- **Renewing the licence for less than seven years:** This allows for an earlier review of a licensee's compliance with its conditions of licence and regulatory requirements.
- **Suspending the licence:** This serves to reprimand the licensee and allows the licensee time to implement remedial measures.
- **Denying a renewal application or revoking the licence:** Revocation usually occurs only during the licence term. If the licensee is before the Commission for licence renewal, non-renewal has the same practical effect.

### Issues

60. Despite establishing a more flexible approach to non-compliance, the Commission notes that a large number of licensees remain in non-compliance on an annual basis. The most frequent instances of non-compliance noted in the 2012 licence renewals were:

- failure to remit sufficient Canadian Talent Development (CTD) or Canadian Content Development (CCD) contributions for initiatives over the licence term;
- failure to provide sufficient proof of payment of CTD or CCD contributions;
- failure to provide sufficient proof of eligibility for CTD or CCD contributions; and
- failure to file annual returns, or filing annual returns that are incomplete.

61. In Broadcasting Information Bulletin 2011-347, the Commission stated that the notion of grading the level of seriousness of non-compliance is consistent with the eventual implementation of more relevant and timely regulatory tools related to compliance.

### Proposed new compliance measures

62. The Commission is proposing to add the following measures and tools to help licensees comply with regulatory requirements and conditions of licence. These tools and measures would be commensurate with the severity and nature of the infraction:

- **Requirement to complete a licence renewal application checklist** that would be provided on the Commission's website as a tool for licensees and would be incorporated into the application process. The checklist would summarize all criteria evaluated during the licence renewal process, including all required elements. The application would not be accepted until the "check-off" process is complete.

- **Publishing annually on the Commission’s website** lists of stations operating in compliance and in non-compliance.
  - **Requirement for licensees in non-compliance to file regular reports** that indicate improvements in areas of non-compliance. For example, for failing to submit annual returns, financial statements or CCD proof of payment on time, the licensee could be required to submit audited financial statements, annual summaries of all CCD contributions with proof of payment, etc.
  - **Increasing the frequency of compliance monitoring.**
  - **Limiting the number of minutes of advertising allowed per hour.**
  - **Increasing regulatory requirements in cases of non-compliance.** The Commission could take measures to address the harm caused to the broadcasting system in cases of non-compliance with, for example, music programming requirements and CCD contributions.
63. Under the Act, the Commission has the responsibility to regulate and supervise the Canadian broadcasting system. The Commission also has a responsibility to deal with non-compliance of broadcasting undertakings with their regulatory obligations. The Commission may take measures to address the harm suffered either by specific players in the broadcasting sector or by the overall broadcasting system as a result of non-compliance by regulated undertakings. The Commission is of the preliminary view that the imposition of increased CCD contributions could be an appropriate measure to institute in order to address the harm to the Canadian broadcasting system in such cases.
64. **Accordingly, the Commission invites responses to the following questions regarding possible additional compliance mechanisms:**
- Q18. To what extent would the Commission’s proposed additional tools and measures to encourage compliance, as described in paragraph 62, be appropriate and effective?**
- Q19. Are increased CCD contributions an appropriate measure to address the harm that occurs in the Canadian broadcasting system as a result of non-compliance?**
- Q20. Are there other reasonable sanctions for different types of non-compliance?**
- Q21. What additional tools, if any, are needed to facilitate a licensee’s compliance with regulatory requirements?**

## Update of sections 8 and 9 of the *Radio Regulations, 1986* regarding logs and records and the station self-assessment report

### Background

65. The Commission uses four types of documents in analyzing a station's programming to verify compliance with the Regulations and with conditions of licence. These also enable the Commission to investigate a station's programming in the case of complaints. The four documents are the following:
- **Program logs**, which contain information about the programming broadcast by a station (date, time, description of program, content category, etc.) over a specific time period;
  - **Tape recordings**, consisting of audio recordings of the actual programming broadcast by a station over a specific time period;
  - **Music lists**, which contain the musical selections in the order in which they were broadcast by a station during a given time period; and
  - **Self-assessment reports**, which are reports produced by the licensee to indicate the levels of different types of content (Canadian music, French-language musical selections, relevant content categories, etc.) broadcast by a station during a given time period.
66. The provisions under which licensees must maintain and submit these documents to the Commission are set out in [section 8](#) and [section 9\(3\)](#) of the Regulations.

### Changes to wording

67. The Regulations were developed when radio stations used magnetic tapes for recording their programming. In the 1980s, some licensees began to submit program logs electronically and using digital media. This resulted in the revision of the wording cited in the Regulations, to "program logs or machine readable records."
68. Given that storing a station's tape recordings previously required physical space, the Commission required licensees to retain these tapes for a maximum period of four weeks, as opposed to the one-year period for program logs. Program logs, which are used by the Commission to compare and validate audio recordings, are now usually stored digitally and submitted electronically by licensees. Over the years, the storage and submission of audio recordings has been simplified and automated for even the smallest operators with the move from analog to digital media.
69. The Regulations contain outdated and/or vague wording (highlighted in **bold** below) and inconsistencies (underlined below) between program logs and audio recording retention requirements that do not reflect more recent technology developments:
- Sections 8(1)(a), 8(2) and 8(4) provide requirements related to program logs or **machine readable records**;

- Section 8(1)(b) specifies that a licensee shall retain the [program log or machine readable record] for a period of one year after the date when the matter was broadcast.
- Section 8(5) specifies that a licensee shall retain a clear and intelligible **tape recording** or other exact copy of all matter broadcast
  - for four weeks from the date of the broadcast; or
  - where the Commission receives a complaint from any person regarding the matter broadcast or for any other reason wishes to investigate it and so notifies the licensee before the expiration of the period referred to in paragraph (a), for eight weeks from the date of the broadcast.
- Section 8(6) also refers to the term, “**tape recording.**”
- Section 9(3)(a) of the Regulations provides details on how licensees should submit information requested by the Commission. Section 9(3)(a) is worded as follows:

At the request of the Commission, a licensee shall submit for any period specified by the Commission in its request the information required by **the most recent** Station Self-assessment Report form issued by the Commission.

70. The Commission intends to change the wording of the Regulations, so that “machine readable record” would read “record,” and that “tape recording” would read “audio recording.”

71. The ease with which stations can store audio recordings and submit them to the Commission upon request has been greatly enhanced by digitization. The Commission proposes to amend and merge sections 8(1)(b) and 8(5) of the Regulations in the following manner, to synchronize the amount of time program logs and audio recordings must be retained:

A licensee shall retain a program log and a clear and intelligible audio recording or other exact copy of all matter broadcast for eight weeks from the date of the broadcast.

72. In order to clarify section 9(3)(a) and to ensure certainty, transparency and ease of reference, the Commission intends to include the most recent Station Self-assessment Report form as an Appendix to the Regulations.

73. **The Commission invites responses to the following questions:**

**Q22. Should the Commission proceed with the proposed amendment of sections 8(1)(b) and 8(5) of the Regulations? If not, why?**

**Q23. How should the Commission, otherwise, amend the Regulations for consistency and to better reflect digital audio technologies?**

**Canadian content development contributions and a review of tangible benefits**

74. In Broadcasting Regulatory Policy 2013-476, the Commission announced that it had amended section 15(2) of the Regulations to relieve licensees of commercial or ethnic radio stations with total revenues of \$1.25 million or less of the requirement to make basic CCD contributions. The Commission is of the view that this amendment simplifies the administration of its current CCD policy by significantly reducing the administrative burden imposed on smaller commercial radio stations. The Commission estimated that one year's normal growth in overall basic CCD funding would outweigh the loss of CCD payments resulting from the change announced.
75. Currently, licensees applying to transfer the ownership of a station must make contributions to CCD as part of the tangible benefits package. In Broadcasting Notice of Consultation 2013-558, the Commission called for comments on a review of the Commission's approach to tangible benefits and to determining the value of a transaction in a change of ownership. The purpose of that review is to streamline the Commission's approach to tangible benefits and to assess the appropriateness of and codify the Commission's practice for calculating the value of the transaction. Interested persons also wishing to intervene in this matter should submit their comments to that proceeding.

**Other matters**

76. While the Commission has identified specific issues to be addressed in the present proceeding, it is nevertheless open to considering other issues and concerns related to the commercial radio sector and falling within its jurisdiction and powers under the Act. Comments should reflect the various cultural, economic, social and technological policy objectives set out in the Act.

**Procedure**

77. The new *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, SOR/2010-277 (the Rules of Procedure), set out, among other things, the rules for content, format, filing and service of interventions, the procedure for filing confidential information and requesting its disclosure, and the conduct of the public hearing. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."
78. The Commission invites interventions that address the issues and questions set out above. The questions have been numbered and parties must copy the questions to which they are responding in their interventions. The Commission will accept

interventions that it receives on or before **16 January 2014**. Only parties that file interventions in the initial intervention period may file a reply. Replies must be limited to matters raised during the intervention period. The deadline for the filing of replies is **18 March 2014**.

79. In accordance with the Rules of Procedure, a document must be filed with, not merely sent to, the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. The Commission takes no responsibility for postal delays and will not notify a party whose submission is received after the deadline date. Late submissions will not be considered by the Commission and will not be made part of the public file.
80. 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 procedure for filing set out below has been followed.
81. Submissions must be filed by sending them to the Secretary General of the Commission by **only one** of the following means:

**by using the**

[\[Intervention/comment/answer form\]](#)

or

**by mail to**

CRTC, Ottawa, Ontario K1A 0N2

or

**by fax at**

819-994-0218

82. Submissions longer than five pages should include a summary.
83. Each paragraph of the submission should be numbered. In addition, where the intervention is filed by electronic means, the line **\*\*\*End of document\*\*\*** should be entered following the last paragraph of the document, as an indication that the document has not been altered during electronic transmission.

### **Important notice**

84. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, e-mail or through the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e-mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.

85. The personal information that parties 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.
86. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, 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.
87. The information that parties 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 web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.
88. The Commission encourages parties and interested persons to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

### **Examination of documents**

89. A list of documents related to the public file for this proceeding is available on the Commission's website. A list of interventions will also be available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca). The list is accessible by selecting "View all proceedings open for comment" from the "Public Proceedings" section of the Commission's website and clicking on the "Interventions/Answers" link associated with this notice.
90. The public may examine public interventions and related documents at the following Commission offices during normal business hours.

### **Location of Commission offices**

Toll-free telephone: 1-877-249-2782  
Toll-free TDD: 1-877-909-2782

Les Terrasses de la Chaudière  
Central Building  
1 Promenade du Portage, Room 206  
Gatineau, Quebec  
J8X 4B1  
Tel.: 819-997-2429  
Fax: 819-994-0218

## **Regional offices**

### **Nova Scotia**

Metropolitan Place  
99 Wyse Road  
Suite 1410  
Dartmouth, Nova Scotia  
B3A 4S5  
Tel.: 902-426-7997  
Fax: 902-426-2721

### **Quebec**

205 Viger Avenue West  
Suite 504  
Montréal, Quebec  
H2Z 1G2  
Tel.: 514-283-6607

### **Ontario**

55 St. Clair Avenue East  
Suite 624  
Toronto, Ontario  
M4T 1M2  
Tel.: 416-952-9096

### **Manitoba**

360 Main Street  
Suite 970  
Winnipeg, Manitoba  
R3C 3Z3  
Tel.: 204-983-6306  
Fax: 204-983-6317

### **Saskatchewan**

2220 – 12<sup>th</sup> Avenue  
Suite 620  
Regina, Saskatchewan  
S4P 0M8  
Tel.: 306-780-3422

**Alberta**

100 – 4<sup>th</sup> Avenue South-West  
Suite 403  
Calgary, Alberta  
T2P 3N2  
Tel.: 403-292-6660  
Fax: 403-292-6686

**British Columbia**

858 Beatty Street  
Suite 290  
Vancouver, British Columbia  
V6B 1C1  
Tel.: 604-666-2111  
Fax: 604-666-8322

Secretary General

**Related documents**

- *Call for comments on the Commission's approach to tangible benefits and determining the value of the transaction*, Broadcasting Notice of Consultation CRTC 2013-558, 21 October 2013
- *Amendments to the Radio Regulations, 1986 concerning basic Canadian content development contributions and the addition of a definition of the Community Radio Fund of Canada*, Broadcasting Regulatory Policy 2013-476, 6 September 2013
- *Licensing of new radio stations to serve Markham*, Broadcasting Decision CRTC 2012-487, 11 September 2012
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Amendments to the Radio Regulations, 1986 - Implementation of the Commercial Radio Policy 2006 and the Digital Radio Policy – Regulatory Policy*, Broadcasting Public Notice CRTC 2008-67, 23 July 2008
- *Digital radio policy*, Broadcasting Public Notice CRTC 2006-160, 15 December 2006
- *Revised policy concerning the issuance of calls for radio applications and a new process for applications to serve small markets*, Broadcasting Public Notice CRTC 2006-159, 15 December 2006

- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *The Issuance of Calls for Radio Applications*, Public Notice CRTC 1999-111, 8 July 1999
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998
- *A policy to govern the introduction of digital radio*, Public Notice CRTC 1995-184, 29 October 1995
- *Services using the vertical blanking interval (television) or subsidiary communications multiplex operation (FM) channel*, Public Notice CRTC 1989-23, 23 March 1989