



Broadcasting Notice of Consultation CRTC 2020-336

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Ottawa, 17 September 2020

Public record: 1011-NOC2020-336

Call for comments on an application by the Canadian Association of Broadcasters requesting regulatory relief for Canadian broadcasters in regard to the COVID-19 pandemic

The Commission calls for comments on an application by the Canadian Association of Broadcasters requesting regulatory relief for Canadian broadcasters in regard to the COVID-19 pandemic.

*The deadline for the receipt of interventions is **19 October 2020**. Only parties that file interventions may file a reply to matters raised during the intervention phase. The deadline for the filing of replies is **29 October 2020**.*

Background

1. The global COVID-19 pandemic has had, and will continue to have, wide-ranging effects on the Canadian economy. As of June 2020, the Conference Board of Canada has projected a downturn in the Canadian economy resulting in expected negative gross domestic product (GDP) growth of -8.2%,¹ significant short- to medium-term unemployment, and declines in consumer spending and consumer confidence. Further, the shuttering of commerce has resulted in declining personal and commercial income.
2. The mandated shutdown of the Canadian economy in light of the pandemic has had a significant impact on the advertising revenues of Canadian broadcasters, particularly during the third quarter of the 2019-2020 broadcast year.
3. In response, in March 2020, the Government of Canada provided [relief to the broadcasting sector](#), including the waiving of Part 1 licence fees, which provided immediate financial relief. In addition, in May 2020, the Minister of Canadian Heritage announced details of a new \$500-million [COVID-19 Emergency Support Fund](#) for Cultural, Heritage and Sport Organizations, a portion of which has been allocated to temporary relief for Canada's audio and audiovisual sectors.²
4. However, it is difficult to predict what the longer-term impact of the COVID-19 pandemic will be on Canadian broadcasters. Although there are signs of a recovery beginning, it can be expected that broadcasters may recover at different rates, depending on their individual circumstances and business models. For example, broadcasters who benefit from diverse and more stable revenue sources, or others that

¹ Data from the [Conference Board of Canada](#).

² The announcement of that fund included a link to a [questions and answers page](#).

benefit from synergies and efficiencies, may recover at a different rate than those who do not.

5. The impact that the COVID-19 pandemic has had on content creators is no less significant than its impact on the broadcasting industry. Music venues, recording studios, production sets and post-production facilities all closed for varying periods of time, and many remain closed to this day.
6. Although elements of the production industry are recovering, the resumption of activities continues to be slowed by factors such as varying restrictions on travel, social distancing requirements, and difficulties in obtaining production insurance.
7. In the longer term, the expectation is for increased demand for production space as the industry ramps back up, as well as increased competition for production facilities. As the content production sectors continue their ramp-up of activities, the supports provided by the Canadian broadcasting system to Canada's creative sector will continue to be needed.
8. Compounding these challenges is consumer behaviour, which has responded to a societal shift that has placed limits on mobility, and has caused consumers to explore different options for obtaining the programming they wish to view and listen to. In this regard, television tuning increased significantly during the pandemic, but is now showing signs of normalizing. Radio tuning, on the other hand, has declined significantly, due in part to unemployment and to a stationary work-from-home workforce. The consumption of streaming video content also increased during the first months of the pandemic, whereas the streaming of audio content appears to be remaining stable in terms of market penetration. In addition to the above, traditional Canadian broadcasting industries are dealing with an increased use of and resulting competition from over-the-top programming services.³

Application by the Canadian Association of Broadcasters requesting regulatory relief

9. On 13 July 2020, the Canadian Association of Broadcasters (CAB) filed an application under Part 1 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) requesting that the Commission grant immediate regulatory relief to Canadian broadcasters in regard to the current COVID-19 pandemic. The CAB proposed various types of regulatory relief that, in its view, would address the significant financial difficulties being experienced by most, if not all, Canadian broadcasters, the difficulties the Canadian creative sector is experiencing in producing programming, and the likelihood that all private broadcasters will fall short of certain requirements set out in their conditions of licence and in applicable regulations.
10. First, the CAB proposed that the Commission deem broadcasting licensees, absent any bad faith on their part, to have met their conditions of licence and the regulations

³ Sources for information relating to these trends: Numeris; Media Technology Monitor (MTM).

relating to spending for the 2019-2020 broadcast year (i.e., 1 September 2019 to 31 August 2020). Under the CAB's proposal, the Commission would consider licensees to be in compliance with such requirements regardless of actual levels of expenditures made, and would not require that any shortfalls be made up in subsequent broadcast years.

11. Second, the CAB proposed that the Commission formally confirm any necessary flexibility for exhibition-related and other conditions of licence such that these requirements would be subject to a "should resources permit" condition.
12. Finally, the CAB proposed changes relating to local management agreements (LMA), which, as defined in section 11.1(1) of the *Radio Regulations, 1986* (the Regulations) are arrangements, contracts, understandings or agreements between two or more licensees or their associates that relate, directly or indirectly, to any aspect of the management, administration or operation of two or more stations, at least two of which (a) broadcast in the same market, or (b) broadcast in adjacent markets, with each station's A.M. 5 mV/m contour, F.M. 0.5 mV/m contour or digital service area, as the case may be, overlapping the A.M. 15 mV/m contour, F.M. 3 mV/m contour or digital service area of the other station. Specifically, the applicant proposed suspending, as of 31 July 2020, the pre-approval requirement for LMAs for radio stations for a minimum period of 18 months, which would include implicit permission on agreements that permit two differently-owned radio stations in a given market to be co-managed by one entity and allow for the co-sale of advertising between those stations and entities.

Approach to the consideration of the CAB's application

13. The Commission regulates and supervises the Canadian broadcasting system in the public interest. Through its policies, licensing and regulations, the Commission ensures that the policy objectives outlined in section 3(1) of the *Broadcasting Act* are met. These policy objectives speak broadly to the financial contributions that should be made by broadcasters, given their relative capacities to do so, and the manner in which these activities should benefit Canadians generally, including Canada's creative sector, as well as Canada's political, social and economic fabric.
14. In considering the CAB's application, the Commission is mindful that, in its regulatory activities, it must balance what are often divergent interests of multiple stakeholders. For instance, many of the financial requirements that are the subject of the flexibilities sought by the CAB represent important elements of funding for Canadian audio and audio-visual programming. Such funding directly benefits Canada's creative and artistic communities, which have themselves also experienced deep negative impacts from the pandemic.
15. Moreover, the Commission is mindful that these financial requirements are calculated based on the previous year's revenues, and, as is the case for Canadian programming expenditure requirements, are already subject to year-over-year flexibilities that permit the carrying over of under-expenditures into subsequent broadcast years. As a result, granting the relief sought by the CAB would, in effect, compound the impact

on contributions to Canada's creative and artistic sectors, which are very likely to decrease in absolute value in the 2020-2021 broadcast year, with many requirements, including those relating to making up for underspending in the 2019-2020 broadcast year, being lost to the broadcasting system.

16. The Commission is also of the view that consideration must be given to many of the important public services provided by broadcasters and the importance of these services to Canadians, particularly in the context of the COVID-19 pandemic. Among these public services are those that enable persons with disabilities to participate more fully in the broadcasting system. Further, the distribution of critical and potentially life-saving public alerting messages through the broadcasting sector contributes to the reduction of risk and the continued safety of all Canadians.
17. Whereas the CAB's application focuses on the needs of its members and broadcasters generally, the Commission must also give due consideration to the effects that the requests could have on other elements of the broadcasting system. This includes groups that benefit from the various requirements, financial or otherwise, for which the CAB is seeking flexibility.
18. As a result, given the potential implications of the CAB's application on the various elements of the broadcasting system, the Commission is of the view that it would be more appropriate to consider the application in the context of a notice of consultation, rather than through the Part 1 application process. Accordingly, the CAB is made party to the present proceeding, and its application is made part of the record of this proceeding. The matters raised therein will therefore be dealt with according to the procedure set out in this notice of consultation.
19. In light of this, the Commission considers that the following matters need to be addressed:
 - proposed outcomes;
 - the Commission's preliminary views on the CAB's proposal; and
 - reporting and compliance monitoring.

Proposed outcomes

20. Any potential regulatory relief should seek to balance the needs of broadcasters – who serve Canada's various regions and multicultural communities, and operate in French, English, Indigenous and other languages – with the needs of other elements of the Canadian broadcasting system. The Commission must be mindful that any flexibility granted should be subject to transparency and oversight, while taking into consideration the administrative burden such measures could create.
21. At the same time, flexibility relating to any regulatory requirements should not jeopardize key services provided by broadcasters. In this regard, television broadcasters, from independent to large vertically-integrated entities, must promote access to programming for persons with disabilities. Through the provision of closed

captioning, described video and audio description, broadcasters provide persons who have visual or hearing disabilities with programming adapted to their particular needs, thereby enabling them to fully participate in Canadian society. Additionally, public alerting distributed by broadcasters contributes to overall public safety and is a critical tool for the reduction of risk of environmental and civic threats to Canadians and the resumption of normal life post-COVID-19. Accordingly, the Commission does not intend to consider any proposals that would diminish the policy framework and measures taken by the Commission in regard to accessibility in broadcasting and in regard to public alerting.

22. Furthermore, local, regional and national news programming ensures that Canadians are informed about issues of concern in a consistently evolving context that is endemic to the current environment. In the Commission's view, any flexibilities that could be considered in regard to spending or other requirements in relation to news must ensure, to the extent possible, that the same depth and breadth of information currently provided to Canadians by Canadian broadcasters is maintained.

23. Accordingly, any potential regulatory relief must ensure that:

- the viability of the Canadian broadcasting sector, insofar as it has been affected by the COVID-19 pandemic, is not further harmed as a result of the regulatory relief proposed;
- parties that currently benefit from the requirements imposed by the Commission on broadcasters are not unreasonably affected by any potential regulatory relief;
- when viewed as a whole, current news and information programming and the service such programming provides to Canadians is maintained; and
- any resulting regulatory action granting potential relief is minimally administratively burdensome on those entities seeking relief but is easily monitored and supervised by the Commission in order to ensure appropriate accountability.

24. In the Commission's view, the CAB's application should be measured against whether or not it meets these outcomes. In addition, the Commission expects any measures proposed by interveners to align with these outcomes. To that end, the Commission seeks comment on the following:

Q1. Does the CAB's proposal align with the outcomes for this proceeding as set out above? If not, how could the CAB's proposal be modified to better align with these outcomes?

Commission's preliminary views on the CAB's proposal

25. Notwithstanding the above, the Commission is of the preliminary view that "deemed compliance" for all broadcasters, as proposed by the CAB, may not be the appropriate

approach, as it is not convinced that the CAB's proposal meets the above-mentioned outcomes against which the application should be measured.

26. The Commission considers that it may be more appropriate to adopt an approach, applicable to all broadcasters, whereby it would determine a broadcaster's compliance with its regulatory obligations for the 2019-2020 broadcast year based on whether that broadcaster has fulfilled such obligations over a more protracted period of time. For example, financial requirements could be spread over several broadcast years to ensure that broadcasters have the flexibility they need, while ensuring that the broadcasting system benefits from broadcasters' financial contributions as Canada's creative industries ramp back up to full capacity.

27. As such, the Commission seeks comment on the following questions in relation to its approach described above:

Q2. Does the approach align with the outcomes for this proceeding as set out above? Please explain. If not, how could this approach be modified to better meet the outcomes?

Q3. Is this approach applicable equally to all expenditure- and exhibition-related requirements? If not, how should such requirements be treated?

Q4. To which entities should these solutions be applied, and under what circumstances would broadcasters be eligible to make use of the proposed flexibilities?

Q5. If the Commission were to adopt this approach, what period of time should be granted to broadcasters for meeting their regulatory obligations for the 2019-2020 broadcast year? Should these obligations be spread equally over a period of time or ramped up over time?

28. The Commission nonetheless recognizes that other approaches may exist, aside from those proposed by the CAB in its application and above by the Commission, to address the concerns raised by the CAB in its application. As such, the Commission seeks comments on the following questions:

Q6. What possible regulatory relief or flexibility other than that requested by the CAB or proposed by the Commission could be granted to Canada's broadcasters and would align with the outcomes set out by the Commission? In proposing solutions, the following must be addressed:

- i. What regulatory requirements should be subject to these proposed flexibilities?
- ii. To which entities should these solutions be applied, and under what circumstances would broadcasters be eligible to make use of the proposed flexibilities?

- iii. For how long should any flexibilities provided by the Commission to Canada's broadcasters apply?

Reporting and compliance monitoring

29. If the Commission determines that it is appropriate to grant broadcasters flexibility in meeting certain regulatory obligations for the 2019-2020 broadcast year, it will be important for the Commission to be able to monitor the manner in which licensees make use of that flexibility. Any monitoring tool must not only respect the outcomes set for this proceeding, it must also provide both timely and relevant data that will allow the Commission to effectively monitor any flexibility granted to broadcasters. Licensees meeting any new or adjusted conditions set by the Commission to make use of flexibilities that may be granted should be required to report on their activities in that regard.

30. In light of the above, in regard to all proposals put forth in response to this notice of consultation, the Commission seeks comment on the following relating to reporting and compliance monitoring:

Q7. On which elements of any flexibility proposed in the context of this notice of consultation should the Commission require broadcasters to report? On which elements should they be required to publicly report?

Q8. What form and frequency should such reporting take? Are additional measures beyond current reporting requirements (relating, for example, to annual returns and the program logs) necessary in regard to reporting on and monitoring compliance with the proposed approach?

Q9. Are there any elements of this reporting for which broadcasters should be granted confidentiality?

Commission's finding regarding local management agreements

31. As noted above, the CAB proposed suspending, as of 31 July 2020, the pre-approval requirement for LMAs for radio stations for a minimum period of 18 months. The provisions relating to LMAs set out in sections 11.1(1) through (3) of the Regulations are rooted in the Commission's long-standing concerns over the potential disadvantage to which LMAs subject competitors who are not party to these agreements. This includes the potential chilling effect such agreements may have on the decisions of potential new entrants, and the extent to which these agreements may reduce, possibly to the detriment of the service provided to the public, the incentive for some or all parties to an LMA to manage their stations efficiently, compete effectively and improve their programming performance.

32. In Broadcasting Notice of Proceeding 2020-25, the Commission announced that it would initiate a proceeding to review the commercial radio policy framework. In that notice, the Commission stated that it may, without limitation, examine issues relating to the current and future environment in which AM and FM commercial radio operates. In the Commission's view, it would be more appropriate to address any

issues relating to the modification of the Commission's current approach to LMAs in the context of that future proceeding, rather than as part of the current proceeding regarding the CAB's application.

Procedural issues

Intervention and reply period

33. The CAB requested that its application be treated on an expedited basis, such that the public process would, at a maximum, include an intervention period of no longer than five days, followed by a two-day reply period.
34. The Commission's general practice is to publish applications with an intervention period of 30 days, followed by a reply period of 10 days. Given the significant potential impact of the relief sought by the CAB, the broad range of possible conditions that could be captured as a part of that relief, and the number of parties that are likely to be affected by any flexibility that may be contemplated as part of this notice of consultation, the Commission finds that it would be appropriate to adopt its general practice relating to the intervention and reply period for the CAB's application.

Procedural requests – Extension of time to comment

35. As set out in Broadcasting and Telecom Information Bulletin 2010-959, the Rules of Procedure allow an interested person to request that the Commission exercise a power under the Rules of Procedure or change the Rules of Procedure for a specific proceeding in order to, among other things, request a change to the procedure, including seeking an extension of the deadline, requesting to submit new evidence at a hearing not referred to in documents filed with the Commission, and requesting to suspend the proceeding.
36. In the current context, the Commission is of the view that much of the data and information necessary for interested parties from a variety of sectors within the Canadian broadcasting system to provide meaningful comment on the CAB's application exists and is well known, with much of it already publicly available. For example, quarterly results for publicly-traded companies are public and well circulated. Further, the economic impacts of the downturn on the production industry, that industry's response to that downturn, and the views of industry players on the outcomes of the downturn are already well articulated.⁴ In addition, the impacts of the COVID-19 pandemic and the response by some elements of the music industry and its funding partners are publicly documented.⁵ Finally, the Government of Canada, through [Statistics Canada](#), has been forthcoming on the overall impacts of the COVID-19 pandemic on Canada's economy.

⁴ See, for example, the CMPA's website and information relating to the [COVID-19 pandemic situation](#).

⁵ For example, see the Canadian Independent Music Association's (CIMA) website for [COVID-19 information and resources for Canada's Music industry](#), as well as the Society of Composers, Authors and Music Publishers of Canada's (SOCAN) [COVID-19 Resources for Members](#).

37. Given the availability of such information, the Commission is of the view that interveners will have the ability to articulate their positions on the CAB's proposal and provide other comments and proposals in a meaningful and informed manner. As such, and given the need for the Commission to provide regulatory certainty to the Canadian broadcasting system, the Commission is of the view that additional delays in addressing this issue would not be in the public interest. Accordingly, absent compelling evidence that would warrant the contrary, the Commission does not intend to accept any procedural requests seeking to extend the deadlines for interventions or for replies to interventions.

Procedure

38. The Rules of Procedure apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answers, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website under "[Statutes and Regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.

39. The Commission invites interventions that address the questions and issues set out above. The Commission will accept interventions that it receives on or before **19 October 2020**. Only parties that file interventions may file a reply to matters raised during the intervention phase. The deadline for the filing of replies is **29 October 2020**.

40. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a template for the covering letter to be filed by the parties, can be found in Broadcasting Information Bulletin 2010-28-1.

41. The Commission encourages interested persons and parties 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.

42. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.

43. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by

screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.

44. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention/comment/answer form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

45. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
46. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
47. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

48. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email or through the Commission's website at 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, email addresses, postal/street addresses, telephone and fax numbers, etc.

49. 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.
50. 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.
51. 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.

Availability of documents

52. Electronic versions of the interventions and of other documents referred to in this notice, are available on the Commission's website at www.crtc.gc.ca by visiting the "Consultations and hearings – Have your say!" section, then selecting "our applications and processes that are open for comment". Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.
53. Documents are also available at the following address, upon request, during normal business hours.

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

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

Secretary General

Related documents

- *Commercial radio policy framework review*, Broadcasting Notice of Proceeding CRTC 2020-25, 28 January 2020
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015

- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Changes to certain practices for filing interventions – Expansion of filing practices to include the filing of joint supporting comments for broadcasting policy proceedings*, Broadcasting Information Bulletin CRTC 2010-28-1, 10 December 2010