



Broadcasting Regulatory Policy CRTC 2022-332

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Revised Commercial Radio Policy

Summary

The Commission has completed its review of the Commercial Radio Policy to ensure the ongoing relevance and effectiveness of the regulatory tools governing commercial radio. The updates adopted by the Commission will allow the regulatory framework to continue to serve the needs and interests of Canadians while also supporting Canadian artists and alleviating some of the regulatory burden on broadcasters.

At the time of the issuance of this regulatory policy, a new legislation with substantial changes to the *Broadcasting Act* (the Act) is awaiting approval by Parliament. The revised Act would provide new tools to address some of the structural issues affecting conventional radio stations, especially as they compete directly for listeners with streaming services. Accordingly, the elements of this regulatory policy are meant to work both under the current Act and in the environment of a new Act, and future proceedings that are being announced as part of this regulatory policy are meant to work seamlessly in either legislative environment.

Key changes to assist broadcasters include added flexibility to the Common Ownership Policy, modifications to the system for identifying Canadian musical selections, and the elimination of the hits policy in bilingual markets. In addition, some changes are focused on supporting creators and Canadians, such as ensuring that Canadian and French-language vocal music quotas can no longer be circumvented through montages, and through the Commission's intention to launch a follow-up proceeding to explore a contribution system for Canadian content development (CCD) that is more adapted to the evolution of commercial radio and ensures funding is directed towards diverse initiatives.

Further, given the importance of broadcasting musical selections from emerging artists as a means of ensuring the discoverability of those artists, sustaining a vibrant Canadian musical industry, and providing listeners with the variety they seek, the Commission finds that it must encourage the broadcast of emerging artists' music on commercial radio stations, and that it must gather more information on the situation facing these artists as soon as possible. Accordingly, the Commission expects commercial radio stations that are not already required by condition of licence to broadcast music by emerging artists to devote, in each broadcast week, at least 5% of their musical selections to selections from

Canadian emerging artists. Further, it expects licensees of those stations to report annually on how they have met that expectation.

In regard to Indigenous Peoples, the Commission considers it has a key role to play in ensuring increased support for, and presence of Indigenous content and voices within mainstream radio broadcasting. Accordingly, the Commission expects commercial radio broadcasters to include Indigenous music in their playlists and to report annually on the amount of Indigenous content aired throughout the broadcast year. Additionally, the Commission intends to gather information on different funds and initiatives that help support, promote and ensure the sustainability of the Indigenous broadcasting content sector through the launch of a follow-up proceeding to explore the CCD contribution system.

Meanwhile, the Commission continues the co-development of a new Indigenous broadcasting policy with Indigenous Peoples in Canada. Some of the outcomes from that process may have an impact on all broadcasting sectors of Canada, including commercial radio stations.

A complete list of the Commission's determinations is set out in the appendix to this document.

Background

1. The framework and most of the different policies comprised in the Commercial Radio Policy of 2006 were put in place in an audio landscape that has since changed considerably. The review of the commercial radio policy comes at a time when radio is in a transition period. A significant portion of the radio industry is struggling, but radio remains very important for entertaining, informing, discovering new artists and ensuring that local voices are heard, affording a proximity that as of yet has no real alternative.
2. This review was launched in the midst of the COVID-19 pandemic and soon after the Government of Canada announced its intention to review the *Broadcasting Act* (the Act), but before all the tools are in place to allow for a truly different approach to regulation.
3. In Broadcasting Notice of Proceeding 2020-25, the Commission announced the process it planned to follow and identified possible issues to be covered by its commercial radio policy¹ review. Phase 1 of this review, a conversation with Canadians through public opinion research, concluded in January 2021 with the release of the final report: [Attitudes and opinions towards commercial radio in Canada](#).

¹ According to the *Radio Regulations, 1986*, "commercial station" means AM, FM or digital radio station, other than one that (a) is owned and operated by the Canadian Broadcasting Corporation/Société Radio-Canada or is a not-for-profit corporation or (b) is a campus station, community station, Indigenous station or ethnic station. Although ethnic radio stations are not considered to be commercial radio stations, they adhere to the commercial radio policy.

4. In Broadcasting Notice of Consultation 2020-374, the Commission initiated Phase 2 of the review of the commercial radio policy framework. As indicated in that notice, the main objective of the proceeding was to assess the relevance and effectiveness of the regulatory tools governing commercial radio and to update the regulatory framework to best serve the needs and interests of Canadians. If necessary, some tools could be removed, changed or added to obtain the following results in an optimal and balanced manner:
 - for Canadian listeners: provide diverse, relevant and quality programming that serves their needs and interests;
 - for Canadian artists: ensure that they (music and spoken word) are best supported by broadcasters in a balanced manner for the creation, presentation and discoverability of Canadian content; and
 - for broadcasters: establish a flexible regulatory framework that enables both English- and French-language radio to remain competitive with digital audio services, and to take full advantage of digital technologies for current radio services.
5. The Commission also stated in Broadcasting Notice of Consultation 2020-374 that comments would be collected during this phase, and that the next phase (or phases) could include additional questions directed at some or all parties or use other appropriate means within the Commission's powers and jurisdiction to ensure the efficient completion of the public record.
6. The deadline to receive interventions for Phase 2 was originally 1 February 2021. However, following a joint procedural request from various associations representing the music industry², it was extended to 29 March 2021. The extension was announced in Broadcasting Notice of Consultation 2020-374-1.

Interventions

7. The Commission received 218 interventions, 158 of which were submitted by individuals and 60 by various companies, organizations and interest groups.

Issues

8. After examining the record for this proceeding in light of applicable regulations and policies, the Commission has considered and addressed the following issues:

² The Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), the Alliance nationale de l'industrie musicale (ANIM), the Association des professionnels de l'édition musicale (APEM), Artisti, the Guilde des musiciens et musiciennes du Québec, the Society of Composers, Authors and Music Publishers of Canada (SOCAN), the Société de gestion collective des droits des producteurs de phonogrammes et de vidéogrammes du Québec (SOPROQ), the Société professionnelle des auteurs et des compositeurs du Québec (SPACQ), and the Union des artistes (UDA).

- the Common Ownership Policy;
 - local management agreements and local sales agreements;
 - Canadian content development contributions; and
 - programming.
9. With respect to programming, the Commission has considered the following issues:
- the Canadian musical selections;
 - content categories and subcategories;
 - Canadian content requirements for content category 2 (Popular Music) musical selections;
 - Canadian content requirements for content category 3 (Special Interest Music) musical selections;
 - the definition of French-language musical selection;
 - French-language vocal music (FVM) quotas;
 - the definitions of broadcast week and peak listening period;
 - the policy on emerging artists;
 - the policy on hits in bilingual markets;
 - montages; and
 - local programming.
10. In addition, the Commission has considered issues regarding the relationship between a revised policy for commercial radio and the co-development of a new Indigenous broadcasting policy with Indigenous Peoples of Canada, as well as issues regarding diversity, including diversity in ownership, programming and contributions, data collection and engagement.
11. The Commission has also addressed issues relating to HD Radio, reports and monitoring.

The Common Ownership Policy

12. The Common Ownership Policy (COP) for radio was established as part of the Commercial Radio Policy in Public Notice 1998-41 and was later reviewed and confirmed in Broadcasting Public Notice 2008-4. Further guidelines on the COP were

set out in Broadcasting Information Bulletin 2010-341, including guidelines around exceptions to the COP.

13. As set out in Broadcasting Information Bulletin 2010-341, the COP has several objectives including the following two:

- to ensure a plurality of ownership within the private commercial element of radio broadcasting, so that Canadians have access to a variety of editorial voices within the radio component of the broadcasting system; and
- to maintain a balance of competition between radio broadcasters in any particular market.

14. The COP states that in a market with fewer than eight commercial radio stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a maximum of two stations within one frequency band. It also states that in a market with eight commercial radio stations or more operating in a given language, a person may be permitted to own or control as many as two AM and two FM stations in that language.

15. Currently, the COP applies when broadcasters file applications to:

- launch a new station in a given market, including when AM stations wish to convert to the FM band;
- change in the ownership or effective control of a station; and
- amend the technical parameters of a station that would increase the coverage areas of existing stations, since the new contours might increase the presence of a broadcaster in adjacent markets. This applies to any case of overlap, even if approval of an application entailing a minor overlap would not significantly affect the diversity of voices and the balance of competition in a market.

16. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on the continued appropriateness of the size and contours of a market, as defined in the COP. It also sought comments on, amongst other matters, the appropriateness of the established ownership limits, as well as the circumstances under which the Commission could make an exception to its COP.

How markets are defined

17. The COP prohibits broadcasters from operating more than a certain number of stations in a specific market. The concept of “market” is defined in the *Radio Regulations, 1986* (the Regulations) and takes into account whether the service is provided by an AM or an FM station.

- For AM stations, the market is defined as the AM daytime 15 mV/m contour or the central area as defined by Numeris, whichever is smaller.

- For FM stations, the market is defined as the 3 mV/m contour or the central area as defined by Numeris, whichever is smaller.

Position of parties

18. In its intervention, Rogers Media Inc. (Rogers) submitted that the Commission should remove the contour criteria, and instead rely solely on the Numeris definition of a market.³ It added that the Commission already refers to this definition in the Regulations and that these well-established parameters should be used given that they directly correlate to a commercial revenue opportunity and, as such, the competitive composition of the market. Rogers stated that the definition should be clear, simple, and consistently applied to be effective. It added that where there is no Numeris market definition, as may be the case in some very small markets, the market definition should be based on Statistics Canada's market definition.
19. The Canadian Association of Broadcasters (CAB) stated that it is no longer valid to assume that rebroadcasting transmitters affect the diversity of programming and the competitive balance in a market. It proposed that the Commission abandon the use of the 3 mV/m or 15 mV/m contours as an indication of market presence in favour of a true market indicator, namely the Numeris definition of markets.
20. The Association des radiodiffuseurs communautaires du Québec, the Alliance des radios communautaires du Canada and the National Campus and Community Radio Association (hereafter the Associations) expressed their concern about the CAB's proposal to no longer include rebroadcasting transmitters as part of the COP assessment. They argued that it could affect the competitive balance of a market.

Commission's analysis

21. Both Rogers and the CAB requested that the market be defined solely by the Numeris definition instead of the current definition of market set out in the Regulations. Currently, the contour is most often used to establish the station's market, as it is usually smaller than the areas as defined by Numeris.
22. The Commission notes that central markets determined by Numeris definitions are limited to established urban areas that offer substantial marketing opportunities that attract paying customers based on validated data such as reach and tuning for stations. These urban areas only constitute a percentage of the total Numeris areas, which already excludes much of the northern part of the country.
23. The Commission further notes that using only the Numeris definition of a market could cause further confusion between the physical and marketing reach of a station, as a market defined by Numeris cannot always be fully covered by a transmitter's

³ Numeris' defines "Central Market" as: a defined geographic area for reporting purposes, which is typically a Census Metropolitan Area or Census Agglomeration as defined by Statistics Canada. The Numeris definition notes that Central Markets are mostly used to define the principal coverage area in radio.

signal. A market could vary depending on history and population changes, which could result in redrawn boundaries (by Statistics Canada, Numeris, or others), hence the reason why the primary contour is based on the actual signal reach rather than the initial notion of a market upon application.

24. Moreover, Numeris is a third-party organization that can unilaterally amend its market areas, either by changing area boundaries and/or definitions, which could have a significant impact on the Commission's decisions.
25. In contrast, the use of the definitions based on the 3 mV/m or the 15 mV/m contours can be consistently applied by the Commission as they are based on fixed technical parameters, thus enabling the use of common boundaries and standard data used by the industry and regulatory bodies, in addition to offering greater predictability to licensees.
26. The use of the primary contour is also consistent with other policies whereby the Commission has considered the primary contour as the market area where solicitation of advertising is permitted.
27. In addition, the constraints arising from frequency availability and interference remain, and therefore, a contour impact assessment must be conducted. As such, any changes in the market definition would not alleviate complications to the assessment or the implementation of the COP and of the Diversity of Voices (DOV) Policy, set out in Broadcasting Public Notice 2008-4. Therefore, defining the concept of a market solely based on the Numeris definition would not help to resolve any current issues and could create confusion regarding the marketable reach of a station.
28. In this regard, the Commission considers that Rogers's request for a clear, simple and consistently applied definition would be more easily fulfilled by retaining only the contour definition of the market.
29. In regard to the CAB's statement regarding the impact of rebroadcasting transmitters, the Commission is of the view that these transmitters can affect the competitive balance in a market. Rebroadcasting transmitters allow licensees to derive revenues from a market (even in the absence of local programming) by increasing the overall reach/listenership of a station, thus making it more attractive to national advertisers. Therefore, the Commission considers that rebroadcasting transmitters should continue to be part of the licensee's market.
30. In light of the above, the Commission finds that the current definition of market remains appropriate as it is clear, predictable, flexible and alleviates most potential problems.

Common ownership limits

Position of parties

31. The Public Interest Advocacy Centre (PIAC), the Forum for Research and Policy in Communications (FRPC) and Music Canada (an association comprised of Sony Music Entertainment Inc., Universal Music Canada Inc. and Warner Music Canada Co.) were against potentially higher levels of consolidation. Amongst the arguments presented, they stated that relaxing the COP would reduce Canadians' access to news produced with different perspectives and advertisers' access to different ownership groups. In addition, it was noted that consolidation could lead to an increase in national news, to the detriment of local news. These interveners also stated that increased ownership concentration would reduce the diversity of voices available in the radio sector and would exacerbate other current problems such as restricted playlists for specific formats. On this matter, the Association Québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) argued that the programming offered by independent broadcasters was more diversified than the programming offered by large broadcasters.
32. Most broadcasters, the CAB and the Ontario Association of Broadcasters (OAB) favoured relaxing the COP. Several models were proposed to allow for ownership of a greater number of stations in a given market, depending on the number of stations being present in the market. They submitted that since radio is increasingly competing with large international online conglomerates, and as radio revenues are decreasing, allowing a degree of increased local ownership could result in greater viability for radio stations. Otherwise, given that broadcasters have already cut non-programming expenses, they could be forced to cut programming expenses to ensure their survival. In their view, allowing further consolidation would benefit Canadians as radio stations would have more resources available for on-air programming.
33. In addition, several broadcasters stated that consolidation generally leads to greater format and music diversity, as one operator generally has a disincentive to compete with itself on one format, and an incentive to segment the market into different formats.
34. Some interveners cautioned that the Commission will need to ensure that any consolidation results in a net benefit for society, particularly in smaller markets. Therefore, they proposed that firm requirements be introduced to ensure incremental increases in local programming (such as local news), the broadcast of musical selections from emerging artists, and programming in different formats.
35. Some interveners, including some broadcasters, indicated that special consideration should be given to small independent undertakings when considering the COP. Specifically, they stated that allowing those broadcasters to own more stations than large broadcasters in a given market could have a positive impact on the financial health of smaller broadcasters as well as on their ability to compete with large broadcasters. Other intervenors proposed different sets of COP limits for smaller broadcasters to allow them to better compete. Some parties also stressed the differences between the language markets and indicated that different solutions may be required for French and bilingual markets.
36. Finally, with respect to AM stations, some interveners indicated that ownership flexibility would allow vulnerable AM stations, including those operating in

news/talk formats, to find a new home on the FM band, without prejudicing the existing content and music diversity of FM radio. However, one intervener noted that allowing AM conversions could lead to hardship for the remaining AM stations and further erode their listenership and revenues.

Commission's analysis

37. The public record indicates that many parties would be amenable to some form of relaxation of the COP limits. However, neither parties in favour of relaxing the COP limits, nor parties in favour of maintaining the current limits, provided conclusive evidence to substantiate their viewpoints.
38. In the Commission's view, some relaxation would not be inconsistent with the objectives of the DOV Policy. Specifically, ever since the DOV Policy was published in 2008, Canadians have shifted the way they consume media and access a variety of new editorial voices and programming content. Further, the media landscape has changed. Indeed, the Commission acknowledges the contributions that other forms of media, such as campus, community, ethnic and Indigenous radio stations, make to the diversity of voices. In addition, with the increasing popularity of digital media, Canadians are able to better seek out content they desire, including the editorial voices and musical selections they wish to hear.
39. Broadcasters in favour of more consolidation have consistently argued that consolidation allows for synergies to be found within one geographical market. For example, consolidated stations are better able to offer advertising packages targeting the demographics required by advertisers. In addition, economies of scale can be found around administration, sales, programming and news, which help to reduce costs and enhance profitability while increasing the quality of programming. This would help the radio industry compete with other forms of media and face pressure from international competitors for audience attention.
40. The Commission acknowledges that consolidation is likely to help improve the financial health of radio stations, which, in turn, will improve the resiliency and competitiveness of the overall radio industry.
41. However, even if consumers now have access to more programming and news than at the time the COP was created, as a result of the growing presence of digital media, consolidation could still negatively impact consumers as it could lead to a decrease in diversity of voices related to both news and programming, and could make it more difficult for smaller independent broadcasters to compete.
42. While broadcasters argued that consolidation allows them to be in a better position to invest in local programming, including news, the Commission is of the view that, absent other regulatory measures, there are no guarantees that they will make these additional investments. In this regard, the Commission notes that, based on its analysis of available information, expenses related to news are more related to a broadcaster's business model than to the number of stations it operates.

43. As such, any changes made to the COP limits should be implemented gradually and carefully, so that the Commission has adequate opportunity to assess the impacts on the broadcasting system.
44. In light of the above, the Commission finds it appropriate to amend the COP as follows:
- for markets with eight commercial radio stations or more operating in a given language, a person may be permitted to own or control as many as four stations, with a maximum of three stations within one frequency band (FM or AM) in that language; and
 - for markets with fewer than eight commercial radio stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with no limits on frequency band.
45. Additionally, the Commission recognizes that the specific circumstances of particular markets or licensees may warrant exceptions to the general COP rules. Accordingly, the Commission will continue to assess requests for exceptions to its policies on a case-by-case basis. As such, the Commission may grant an exception to the COP where it finds that an exception is in the public interest, such as when the exception provides for clear benefits to Canadians and the broadcasting system. Amongst potential proposals to improve the broadcasting system, the Commission may consider an exception to the COP when applicants propose additional benefits to the broadcasting system such as:
- tangible benefits that are higher than the minimum outlined in Broadcasting Regulatory Policy 2014-459;
 - additional Canadian content development (CCD) contributions to be imposed by condition of licence;
 - additional commitments to local programming (particularly local and regional news) to be imposed by condition of licence; and
 - additional initiatives supporting artists from Canada's racialized communities to be imposed by condition of licence.
46. The Commission may also consider granting exceptions for small or independent players where such exceptions would allow them to better compete with larger players.

Simplification of process

Position of parties

47. In its intervention, the CAB submitted that in a single operator market of three stations or less, an existing incumbent operator should be entitled to apply for an

additional station or stations, up to the maximum of four stations set out in the COP, without triggering a call for applications.

48. The CAB added that the market capacity test should be amended to draw a distinction between the capacities of a market to sustain a new incumbent-owned station versus that of a new entrant, with priority given to granting new licences to incumbents.
49. Some parties also stated that a simplified administrative process should be put in place to ensure timely decisions when applications for a modification in ownership or control are filed.

Commission's analysis

50. In regard to the CAB's request, the Commission notes that an exception to the call for applications process already exists for proposals by the sole commercial operator in a market to improve service to the market, either through an AM to FM conversion or when applying for a new station. Furthermore, the Commission often considers the capacity of a market to sustain a new incumbent-owned service as opposed to a new entrant when assessing an application. However, while amending the market capacity test to give priority to incumbent operators may increase the viability of the market or of the incumbent proposed service, it may also go against the DOV Policy objectives.
51. The Commission acknowledges that timeliness is important for ownership transactions. However, the Commission notes that it implemented an administrative process for certain transfers of shares on an expedited basis in Broadcasting Information Bulletin 2008-8-2. In addition, it published service objectives in Broadcasting and Telecom Information Bulletin 2011-222 that result in ownership decisions (changes in effective control, share transfers or the acquisition of assets) being published much faster than other applications that may or may not require a public process.
52. The Commission further notes that modifying the current process would involve more than just commercial radio stations, which are the focus of the present proceeding.
53. Given the potential implications resulting from a change to this approach and the limited amount of evidence tendered as part of this proceeding, the Commission considers that the present proceeding is not the appropriate forum for considering amendments to the approval process for ownership transactions.

Local management agreements and local sales agreements

54. Local management agreements (LMA) and local sale agreements (LSA) are formal or informal arrangements, contracts, understandings or agreements between two or more licensees and relating to at least two radio stations in the same market and adjacent markets. While a LMA allows a licensee to perform one or numerous functions associated with the management of another station in a market (or in an adjacent market), a LSA generally relates to the station's advertising sales. They are both means for the licensees to benefit from synergies by decreasing costs, allowing them to share resources and advertising costs and revenues in a market. As such, they can

offer an alternative business model that provides flexibility and creates opportunities for synergies.

55. Pursuant to section 11.1 of the Regulations, licensees of commercial radio stations serving the same market who wish to enter into a LMA, or any other similar business arrangement, whether formal or informal, must first apply for Commission approval. LMAs will be authorized by conditions of licence only where clearly warranted by circumstances.

56. In Broadcasting Public Notice 2005-10 (the 2005 LMA-LSA Policy), the Commission indicated the elements to be examined in considering applications for authority to enter into LMAs, as follows:

- the profitability of the stations involved;
- the number of stations owned by the parties in the market concerned;
- the potential impact on competitors;
- the potential impact on new entry;
- the possible reduction in the diversity of editorial voices and in the overall diversity and quality of programming; and
- the potential impact on the ability of radio stations to better compete with other media.

57. In the 2005 LMA-LSA Policy, the Commission concluded that LSAs fell within the definition of a LMA as not only is the local sales function an aspect of the operations of a radio station, but there is also likely to be a direct relationship between local sales and programming. As such, licensees wishing to enter into a LSA were also required to apply for Commission approval to do so.

CAB's Part 1 application seeking relief for broadcasters

58. On 13 July 2020, the CAB filed a Part 1 application requesting that the Commission grant immediate regulatory relief to Canadian broadcasters by reason of the COVID-19 pandemic. Amongst its proposals, the CAB proposed suspending, as of 31 July 2020, the pre-approval requirement of LMAs for radio stations for a minimum period of 18 months. This would 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 without requiring the Commission's prior approval.

59. In Broadcasting Notice of Consultation 2020-336, the call for comments on the CAB's application, the Commission expressed the view that 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 the Commercial Radio Policy review proceeding. Accordingly, the CAB reiterated its request regarding LMAs in its intervention filed as part of the present proceeding.

Position of parties

60. In its intervention, the CAB indicated that permitting greater flexibility in the use of these arrangements would serve the public interest. The CAB argued that, particularly for stand-alone stations or smaller operators, such agreements could act as practical and immediate alternatives to cuts, sales or closures. It stated that more flexible LMA and LSA policies would provide additional opportunities to achieve local operational efficiencies.
61. Specifically, the CAB requested that the Commission eliminate regulations that necessitate prior approval for broadcasters wishing to enter into LSAs, as competing broadcasters in the same local market can already hire the same sales agents. The CAB also requested that the Commission eliminate pre-approval requirements for LMAs that are consistent with its proposed COP. The CAB noted that pre-approval requirements could remain for LMAs that are in excess of those limits.
62. Some parties opposed the CAB's proposed changes. The FRPC submitted that the CAB's proposal would lead to an unacceptable reduction in the diversity of news and competition as it would lead to the effective reduction in the number of individual broadcasters. The Syndicat canadien de la fonction publique (SCFP) submitted that not requiring the Commission's prior approval of such agreements would deprive the Commission of important information on the state of the commercial market.
63. The Associations also opposed the CAB's proposed changes, arguing that such changes could lead to widespread use of LSAs in small markets, which could in turn put local campus and community stations relying heavily on local advertising at a competitive disadvantage. The Associations also noted that because LSAs might negatively impact community and campus radio stations by allowing local commercial radio stations to scale up their advertising efforts, the Commission should continue to evaluate these agreements on a case-by-case basis.
64. The PIAC submitted that LMAs and LSAs are by nature a form of "cartelization" and that they are unnecessary.

Commission's analysis regarding LMAs

65. Since LMAs can involve several aspects of a station's operation, the Commission is of the view that prior approval should remain as a requirement to ensure that LMAs do not lead, even inadvertently, to a change in effective control of the stations involved in the agreement, and to ensure that the LMA truly serves the public interest.
66. However, the Commission is also of the view that LMAs can provide for increased flexibility to broadcasters to outsource some of their operations to a third party without impacting their ability to control their own undertaking(s), and can allow them to benefit from certain operational synergies to help maintain profitability in an industry that is showing gradual decline. On this matter, the Commission notes that the public interest might be better served in terms of diversity of voices by LMAs than by additional acquisitions.

67. Furthermore, in certain circumstances, LMAs can allow broadcasters to focus on their core mandate, which is to provide quality programming, without having to deal with matters such as soliciting advertising, accounting and technical maintenance. Accordingly, the Commission is of the view that the stringent criteria used in the 2005 LMA-LSA Policy to approve LMAs could be amended.
68. The Commission considers that most of the existing safeguards it has established around LMAs are enough to alleviate the risks and potential negative impacts on incumbent radio stations in a given market.
69. Nonetheless, the Commission is of the view that the restriction allowing the use of LMAs only by unprofitable stations should be removed in order to allow increased flexibility for broadcasters to better react to economic fluctuations and shifting market dynamics. The Commission would, however, still retain the ability to review the proposed LMAs to ensure that policy objectives relative to the diversity of voices are met, while the industry would be given the flexibility to consider opportunities to find synergies, limit the costs of their operations and benefit from economies of scale.
70. Given the Commission's more open approach towards LMAs, the Commission considers it appropriate to provide parties with guidance on the types of LMAs that it is likely to approve. In particular, the Commission is of the view that parties to a LMA must be prohibited from obtaining any exclusivity on advertising by any means. For example, parties to a LMA cannot offer a discount on advertising to advertisers if they agree not to acquire advertising on competing radio stations.
71. In light of the above, the Commission finds that the definition of a LMA is still appropriate and that it will consider allowing entrance into LMAs beyond unprofitable stations, if they satisfy the following criteria:
- the number of stations collectively owned by the parties in the market complies with the threshold set in the COP;
 - the effective control of each undertaking remains exercised by their respective licensees;
 - each licensee maintains distinct and separate programming and news services;
 - each licensee remains responsible for the management of their distinct services, including the program director and the news director, as well as any other related staff assigned to programming and/or news activities; and
 - the LMA includes a provision that prohibits parties of the LMA acquiring exclusivity on advertising.
72. The Commission is also prepared to consider approving LMAs that do not meet these criteria. However, in such cases, the onus would be on the applicant to clearly demonstrate that its proposal would nevertheless serve the public interest.

Commission's analysis regarding LSAs

73. In the 2005 LMA-LSA policy, the Commission determined that LSAs were LMAs because sales were an aspect of the operations and because it was considered that a direct relationship between local sales and programming was likely.
74. Regarding the relationship between programming and advertising, the Commission considers that other parties of the LSA would not allow for one party to lower unilaterally its investments in programming as it would likely decrease the total advertising received by the parties to the LSA. Similarly, each radio station should have an interest in maintaining its competitive position relative to other stations in the market, including those that are part of the LSA, as each radio station's share of the advertising revenues will likely be based upon its own audience share. Indeed, a decline in audience share will have a negative impact on a licensee's future advertising revenues and on whether the LSA is renewed or cancelled.
75. Accordingly, the Commission is of the view that broadcasters will remain encouraged to invest in their programming to maintain the audience share of their stations, regardless of whether or not they are party to a LSA.
76. However, to ensure that the implementation of LSAs is not made to the detriment of other broadcasters in a given market, the Commission finds that the impact of LSAs on the competitive balance of a market cannot be overlooked. Without safeguards, LSAs could make it increasingly difficult for new companies to thrive and could drive existing radio stations out of the market, negatively impacting the diversity of voices.
77. Accordingly, the Commission is prepared to consider that LSAs meeting certain criteria do not fall under the definition of LMAs and that approval will not be automatically required for such LSAs.
78. In light of the above, the Commission determines that LSAs will no longer be considered LMAs if they meet the following criteria:
- the LSA does not involve a number of stations that is above the number of stations allowed in the COP;
 - there is confirmation that LSAs are set for a limited period of time, as a locked-in agreement would impact the effective control of the radio stations;
 - the ownership of all assets must remain with each licensee;
 - separate, distinct news and other programming services and management must be maintained;
 - each licensee must retain responsibility for the news and other programming staff employed by its undertaking(s); and

- the LSA includes a provision that prohibits parties of the LSA from acquiring exclusivity on advertising.

79. The Commission notes that allowing entry into certain LSAs could increase the advertising revenues earned by broadcasters by reducing competition amongst broadcasters within the local radio market, which could strengthen their ability to compete with other forms of media. In addition to having a positive impact on total revenues, LSAs could also create synergies in the marketing and sales functions that would reduce the expenses of broadcasters.
80. The Commission expects parties entering into LSAs that comply with the above-mentioned criteria to notify and file their agreement with the Commission 30 days prior to the execution of the agreement. This will enable the Commission to monitor how such agreements are being used by the industry and will ensure that the proposed LSA is in compliance with the criteria set out above, that such agreements are limited to sales, and that programming decisions remain controlled by the licensee. The Commission notes that LSAs which do not meet the above-noted criteria will still be considered to be LMAs and will still require pre-approval.
81. With the above safeguards, the Commission is of the view that it may be able to collect evidence on how this additional flexibility would be used and the impact of this flexibility on the industry and on the diversity of voices in a market. This evidence could be used in a future regulatory review.

CCD contributions

82. As set out in paragraph 3(1)(e) of the Act, each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming.
83. One of the ways radio stations contribute to this objective of the Act is through CCD contributions to support the development and promotion of musical and spoken word content for broadcast.
84. CCD contributions are made in three primary ways: basic contributions, over-and-above contributions⁴ and tangible benefits.
85. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on whether future CCD contributions would be sufficient to ensure that commercial radio and CCD funding continue to fulfill the Act's policy objectives, on the formulas for calculating contributions, and on the current allocation formulas.

⁴ As part of applications for new licences, some applicants commit to making additional CCD payments that are over and above the requirements set out in the Regulations. These commitments become conditions of licence and the contributions are usually spread out in equal payments over seven consecutive broadcast years.

Basic contribution levels

86. Pursuant to subsection 15(2) of the Regulations, a licensee operating a commercial station or ethnic station shall, if the licensee's total revenues are more than \$1.25 million, contribute annually to eligible initiatives \$1,000 plus 0.5% of those revenues that are in excess of \$1.25 million.

Position of parties

87. Several parties submitted that basic CCD contributions should stay at current levels. Some interveners stated that altering the way CCD contributions are calculated could result in licensees being required to increase the CCD expenditures to maintain current contribution levels.
88. Some interveners, including the CAB and Starboard Communications Ltd. (Starboard), submitted that the formulas for calculating CCD contributions should be modified to provide relief for broadcasters. Starboard added that modifications to the formulas to maintain or increase the current level of funding would cripple, if not eliminate, some smaller, private broadcasters.
89. Additionally, Leclerc Communications inc. (Leclerc) stated that should changes be required to the formula for calculating basic CCD contributions, such changes should not impose an additional burden on smaller broadcasters. In its view, any adjustments should take into account the number of stations operated by the licensee or its total revenues so that broadcasters who benefit the most from consolidation are the ones that will see increases in basic CCD contributions. One of the suggestions made by Leclerc is to increase the contribution rate of large broadcasters to 0.75% above the \$1.25 million threshold.
90. Many interveners argued that the future of music production financing lies with amending the Act to include online services.
91. In its intervention, the Ministère de la culture et des communications du Québec (MCC) submitted that a reduction in the total value of CCD contributions would have serious consequences on Canadian and Québécois musical productions, which have faced challenges over the last few years. It argued that maintaining the current levels of available CCD funding should be a priority and that the current CCD requirements should be maintained to ensure the continued reach of Canadian content.
92. The Associations stated that current funding levels will not be sufficient and that if CCD funding is reduced over time, some or many campus and community radio stations will be in jeopardy. It added that Canadian broadcasters with multiple stations with more than \$1.25 million in annual revenues should pay more than 0.5% of their annual revenues.
93. ADISQ proposed that the share of annual basic CCD contributions be revised in a more equitable manner by taking into account the revenues of the broadcasters. Specifically, it submitted that contributions should be based on revenues as a whole,

not just the revenues after the \$1.25 million threshold of each station. It also proposed a group-based approach whereby the contribution requirement would be calculated based on the ownership group's revenues.

94. For its part, the Community Radio Fund of Canada (CRFC) submitted that if contributions continue to decline as forecasted, it will have to reduce the funds distributed to stations within the coming years, which would erode the capacity for community and campus radio stations to continue to function and vastly undermine the objectives set out in the Act. It proposed that licensed stations earning more than \$1.25 million be required to contribute at least 1% of their annual revenues.

Commission's analysis

95. CCD contributions are expected to decrease in the coming years due to the decline in revenues of the commercial radio market, a marked slowdown in new stations being licensed, and the unpredictability of tangible benefits stemming from ownership transactions. Since basic contributions are based on a percentage of the previous broadcast year's annual revenues, those contributions would decrease at a consistent rate, reflecting the decreasing revenues of commercial radio stations. For their part, over-and-above contributions and tangible benefits will likely decrease significantly because of the decrease in new radio stations and in ownership transactions.
96. Many interveners suggested that the Commission look to online players if it is seeking ways to increase contribution levels. In this regard, the Commission notes that the current proceeding only concerns commercial radio stations. The Commission also notes that while proposed legislative amendments may change the Act's approach to online players, such changes have not been adopted by Parliament at the time this decision was rendered by the Commission. As such, the inclusion of online services into the CCD regime will be more appropriately addressed in a different proceeding if Parliament were to adopt the proposed changes, rather than as part of the present proceeding. However, while the future in this regard is still uncertain, the Commission is of the view that the approach taken towards CCD should be one that is readily adaptable to future changes.
97. Few interveners were able to provide an answer as to how much money should flow into the CCD contribution system. However, some interveners, such as the CRFC and the MCC, submitted that decreasing CCD contribution levels would vastly undermine the fulfillment of the objectives set out in the Act.
98. The Commission considers that any new approach to CCD contributions should continue to provide some relief to smaller broadcasters and be equitable among all broadcasters. The chosen approach should also help offset the projected decrease in overall CCD contributions (basic and over-and-above contributions, and tangible benefits).
99. In light of the above, the Commission intends to initiate a follow-up proceeding to seek comments on modifying the approach to basic CCD contributions by calculating basic CCD payments based on the annual radio revenues of the ownership groups

rather than on a station-by-station basis. As a preliminary view, the Commission considers that ownership groups should fall under one of three levels:

- groups with revenues below \$10 million would not be required to pay CCD contributions;
- groups with annual revenues of \$10 to \$50 million would be required to allocate 0.5% of their annual revenues to CCD contributions; and
- groups with annual revenues over \$50 million would be required to allocate 1% of their annual revenues to CCD contributions.

100. Depending on the outcome of the follow-up proceeding, the Commission may make amendments to the Regulations to implement any changes to the basic CCD contribution system.

Discretionary initiatives

101. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on whether it should remove the option to allocate a portion of the contributions to discretionary initiatives, whether it should require broadcasters to spend discretionary CCD contributions in a specific region or geographic area, and whether the eligibility criteria for discretionary initiatives are still relevant. The Commission also sought comments on the possibility of requiring broadcasters to submit an annual report on their discretionary CCD spending.

Position of parties

102. Many parties were opposed to the removal of the option to allocate a portion of CCD contributions to discretionary initiatives.

103. The OAB stated that proposals to eliminate or reduce discretionary initiatives would result in the loss of a variety of highly effective local programs. It added that local events provide a focus around which local artists can rally.

104. In the CRFC's view, there are certain instances where discretionary funds have been used improperly and have not serve the objective of the Act, such as for marketing or promotional purposes. It argued, however, that despite these failings, there is still room for contributions to discretionary initiatives and that this aspect of CCD contributions should remain in its entirety because the intended use of those funds is still critical to fulfilling the mandate of the Commission and of the Canadian broadcasting system as a whole.

105. Sirius XM Canada Inc. (Sirius) stated that it has consistently demonstrated that the funding it devotes to discretionary initiatives has considerable value. It further argued that its discretionary CCD expenditures have proven to be far more effective and considerably more impactful for Canadian musical and spoken word talent than merely contributing to one of the designated funds.

106. In regard to the addition of a requirement that discretionary CCD contributions for individual stations be spent in a specific region or geographical area, most parties who provided a response to this question were opposed.
107. In regard to the possibility of requiring broadcasters to submit an annual report on their discretionary CCD spending, several parties argued that this would create an additional administrative burden.
108. In a joint intervention, the Canadian Independent Music Association, Advance – Canada’s Black Music Business Collective (Advance), Canadian Council of Music Industry Associations (including Alberta Music, Cultural Industries Ontario North, Manitoba Music, Music BC, Music Nova Scotia, Music NWT, Music PEI, Music Yukon, Music NB, MusicNL, MusicOntario, SaskMusic), Indigenous Music Alliance (IMA), Music Managers Forum Canada, Music Publishers Canada and the Songwriters Association of Canada (hereafter CIMA) stated their support of an annual report on discretionary CCD spending. For its part, Radio 1540 Limited (Radio 1540) suggested that the annual report include the number of third-language music and spoken word artists supported.

Commission’s analysis

109. Most parties indicated that they saw value in the ability to direct CCD funds to initiatives other than the required funds. In the Commission’s view, contributions to discretionary initiatives do provide value at the local level and allow flexibility to broadcasters to target initiatives that are of interest to a specific community.
110. In regard to imposing geographic restrictions, the Commission considers that this would create additional administrative burden. Furthermore, the proposed approach outlined above whereby basic CCD contributions would be based on the revenues at the ultimate owner level would complicate such restrictions further as some ownership groups have stations throughout Canada.
111. In regard to reporting on discretionary CCD spending, broadcasters have a responsibility to ensure that their contributions to discretionary initiatives meet the eligibility criteria and thus serve to fulfill the policy objectives of the Act. Currently, as part of their annual returns, licensees file proof of payment as well as proof of the eligibility of the initiative receiving a CCD contribution.
112. The process of verification of discretionary spending takes time and effort for both the industry and the Commission. Requiring broadcasters to file additional details as part of existing reports or a new report on their discretionary contributions, such as that proposed in Broadcasting Notice of Consultation 2020-374, would add to the administrative burden for the parties involved. However, in light of the proposed approach for basic CCD contributions, such reporting would be less onerous for owners of multiple stations as they would likely only have to file a single report.
113. While the additional details would provide insight into how discretionary funding contributes to the Canadian broadcasting system, the possible inconsistencies in the

data provided would likely not allow for any meaningful comparison or analysis of the information submitted across broadcasters. Furthermore, minimizing any inconsistencies would require clear and easy to understand definitions and guidance for each data point that would be collected.

114. The Commission also notes that additional reporting may have the unintended consequences of broadcasters opting out completely or significantly reducing their discretionary spending because the reporting is too onerous.
115. Therefore, the Commission considers that any new reporting requirement should balance the insight to be gained from the reports and the administrative burden that would be placed on all stakeholders by imposing such a requirement.
116. In light of the above, as part of the above-noted follow-up proceeding on CCD contributions, the Commission intends to seek comments on the appropriate level of information that broadcasters should provide in regard to the discretionary portion of their CCD contributions.

Eligibility criteria for CCD contributions

117. The Commission set out the eligibility criteria for CCD funding in Broadcasting Public Notice 2006-158 (the 2006 Commercial Radio Policy). In addition to FACTOR and Musicaction, the Commission considers that the following parties and initiatives are eligible for CCD funding:
 - National, provincial, and territorial music industry associations.
 - Schools and education institutions that are accredited by provincial authorities. Such contributions must specifically benefit students of music and journalism, including scholarships and the purchase of musical instruments.
 - Initiatives, including talent contests, for the production and promotion of local music and local music artists, particularly emerging artists.
 - Independent parties dedicated to producing new spoken word content that would otherwise not be produced for broadcast.
 - Audio content initiatives that would further advance the fulfilment of specific objectives of the Canadian broadcasting system as outlined in the Act such as a community radio fund, Indigenous radio, and other specialized audio broadcasting services dedicated to serving the particular needs and interests of children, Indigenous Peoples, and persons with disabilities.
118. The eligibility criteria are based on the following guiding principles:
 - CCD funds must be used to support, develop or promote Canadian musical or spoken word talent, including journalists;

- all CCD contributions must entail direct, out-of-pocket expenditures; and
- all expenditures must be directed to projects that go well above and beyond promotional activities and regular programming costs.

119. The policy is intended to be flexible so that licensees can contribute to a wide variety of initiatives, and to ensure that contributions have the best possible impact on Canadian musical and spoken word artists.

Position of parties

120. In its intervention, the CAB stated that the Commission should establish clearer criteria on eligibility and put in place a staff pre-clearance mechanism.

121. Alternatively, Rogers indicated that the eligibility criteria set out in the 2006 Commercial Radio Policy are unnecessarily restrictive. Rogers added that it became apparent during the COVID-19 pandemic that the list of eligible initiatives is heavily focused on live events and performances.

122. The CRFC stated that more needs to be done through CCD contributions to support community radio stations. It proposed that community radio broadcasters be specifically included as eligible recipients. It also suggested that organizations that support Black, Indigenous, and People of Colour (BIPOC) musicians and broadcasters be included as eligible recipients.

123. The IMA and Advance stated that a large portion of the current activities eligible for discretionary CCD contributions do not effectively serve the purpose of developing and promoting diverse Canadian content. Specifically, the IMA stated that commercial radio stations should be mandated to spend a portion of their contributions directly on Indigenous events, presentations and artists through new allocations to existing music industry organizations like FACTOR and Musicaction, as well as through support of the National Indigenous Music Organization (NIMO).

124. In addition, First Peoples Radio (FPR) stated that Indigenous broadcasting is poorly funded and that the commercial radio sector has a role to play in supporting Indigenous voices. In its view, the Commission should use its regulatory authority to require that a portion of the mandatory CCD contributions made by commercial radio broadcasters are targeted specifically to the support of Indigenous broadcasting.

125. According to Starboard, if the Commission decides that a portion of CCD contributions should be directed to Indigenous artists, FACTOR has ample reserves to accommodate such a request from within its existing resources.

126. CIMA and Music Canada proposed that eligibility for federally-funded programs be expanded to include the Unison Benevolent Fund, which in their view plays a critical role in providing emergency financial relief and mental health counselling to artists, crews, technicians and other individuals across the country working in the music sector who are facing immediate crises.

Commission's analysis

127. In regard to the CAB's request for clearer criteria and a staff pre-clearance mechanism for eligibility criteria, the Commission considers that the above-noted guiding principles continue to be a good foundation for the eligibility criteria. Furthermore, the Commission will continue to provide detailed eligibility guidelines as well as examples on the Commission's [Canadian Content Development Contributions and Eligible Initiatives](#) web page, which provides a substantive description and list of discretionary initiatives that qualify as CCD expenditures.
128. With respect to the CRFC's proposal, while community stations already benefit from the funding they may receive from the CRFC through its receipt of CCD contributions under the basic annual contribution mechanism or through mandatory tangible benefits triggered by ownership transactions, some broadcasters may wish to direct some of their discretionary contribution amounts to specific community stations for the purpose of developing and promoting Canadian musical and spoken word content for broadcasters, as is currently permitted for Indigenous radio stations. As such, the Commission considers it appropriate to indicate that community radio stations are eligible recipients of contributions. The Commission is also adding the CRFC by name, when it was previously eligible under the more generic descriptor of "a community radio fund."
129. In regard to the proposal to add the NIMO to the list of eligible parties and initiatives, the Commission notes that little is known about the NIMO, a nascent organization, whether in regard to its structure, its activities or how it is supported financially. The Commission considers that more information is required before it can be added to the list. However, some of the NIMO's activities may be eligible under the more general criteria of the eligibility list.
130. In addition, the Commission is of the view that, while the Unison Benevolent Fund may provide critical and valued support to music artists in times of need, the basic guidelines for initiatives eligible for CCD funding state that payments for career development must focus on the enhancement of talent. Contributions must not be directed to support costs such as those related to housing, transportation, or food. The Commission considers that eligible initiatives should continue to meet those basic guidelines.
131. In light of the above, the Commission adds community stations to the list of eligible recipients of discretionary CCD contributions and amends the eligibility criteria to include audio-content initiatives by community radio stations and racialized people, as follows:

Audio-content initiatives advancing the specific objectives of the Canadian broadcasting system as outlined in the *Broadcasting Act*, such as those created by community or Indigenous radio stations and other specialized audio-broadcasting services dedicated to meeting the particular needs and interests of children, Indigenous Peoples, people with disabilities, and racialized people.

132. The Commission will also request more information from the NIMO to determine whether it is eligible to receive discretionary CCD contributions as part of the above-noted follow-up proceeding on CCD contributions.

Allocation of basic CCD contributions

133. Currently, as set out in subsection 15(5) of the Regulations, basic CCD contributions must be allocated as follows:

- at least 15% to the CRFC;
- at least 45% to FACTOR or Musicaction, or, if the licensee is licensed to operate an ethnic station or spoken word station, to any eligible initiative that supports the creation of ethnic programs or programming from Content Category 1; and
- the remaining 40% to an eligible initiative of the licensee's choosing.

134. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on the way contributions are allocated to funds.

Position of parties

135. In its intervention, ADISQ proposed that 15% of basic CCD allocation go to the CRFC, 70% to FACTOR/Radio Starmaker Fund or to Musicaction/Fonds RadioStar, and 15% to eligible initiatives of the licensee's choosing. Specifically, ADISQ proposed that a centralized fund disburse the 70% to be allocated to FACTOR/Radio Starmaker Fund and Musicaction/Fonds Radiostar. Within each language market, the two recipients would agree on a percentage to go to each.

136. The IMA suggested that an additional 15% in CCD contributions be added to the current FACTOR and Musicaction allocation for the benefit of Indigenous artists and the Indigenous-owned music industry through the work of those existing music industry bodies.

137. The CRFC proposed that 45% of basic annual contributions go to FACTOR or Musicaction, 40% to the CRFC and 15% to an initiative of the licensee's choice.

138. In addition, some interveners suggested setting up new funds. Within these proposals, the CAB and the OAB suggested setting up a commercial radio news fund and the IMA and Advance jointly proposed redistributing the percentages and adding a fund to support the development of female, Indigenous and racialized artists.

Commission's analysis

139. In its intervention, ADISQ proposed that a centralized fund disburse the portion of CCD contributions that is allocated to FACTOR/Radio Starmaker Fund and Musicaction/Fonds RadioStar. While ADISQ did not specify who would be responsible for the centralized fund, the Commission considers that the four funds would benefit from the predictability of a set allocation formula, which would assist them with their short-, medium- and long-term planning.

140. Currently, Radio Starmaker Fund and Fonds RadioStar only receive CCD contributions stemming from ownership transactions through tangible benefits. While they do receive half of the contributions following each ownership transaction, and have, over the past few years, been the main recipients of CCD contributions, the unpredictability of the contributions stemming from ownership transactions is likely to have a negative impact on the two funds. In light of this unpredictability, the Commission considers that it would be appropriate to allocate some of the basic CCD contributions to the two funds, which would provide more stability in the funding they receive.
141. While various interveners suggested a rebalancing of the percentages of CCD contributions going to the funds and eligible initiatives, some interveners also suggested reducing the percentage allocated to discretionary initiatives, allocating a percentage to new funds, and creating new funds. In this regard, the Commission notes that it can direct broadcasters to allocate CCD contributions to certain purposes and can also encourage the establishment of a fund to support those purposes. However, the Commission itself cannot create a fund.
142. In regard to the IMA and Advance's proposed fund to support the development of female, Indigenous and racialized artists, the Commission acknowledges that additional support for the development of artists who represent equity-deserving communities of Canada is warranted. The Commission notes that some funds and eligible initiatives already allocate CCD funding to initiatives supporting Indigenous artists and Canadian diversity. While a fund such as that proposed by IMA and Advance would serve to fulfill objectives of the Act relating to diversity, it is unclear whether a separate fund is the best approach or whether the Commission should instead encourage or require that an increased portion of the contributions that broadcasters pay to already established funds and initiatives be directed toward supporting Indigenous artists and Canadian diversity. Moreover, such a fund, if it is deemed to be appropriate, should support Canadian diversity more broadly and not just focus on the three communities identified by the IMA and Advance.
143. In addition, the Commission is of the view that the commercial radio news fund proposed by the CAB and the OAB would run counter to one of the guiding principles for determining the eligibility of initiatives, namely that all expenditures must be directed to initiatives that go well above and beyond promotional activities and regular programming costs.
144. In light of the above, the Commission intends to consider the following preliminary allocation formula for basic CCD contributions at the above-noted follow-up proceeding on CCD contributions:
- at least 15% to the CRFC;
 - at least 15% to a new national fund to support Indigenous artists and Canadian diversity,⁵ should such a fund be created (in the absence of such a fund, the

⁵ Indigenous Peoples, racialized people, women, people with disabilities and people who identify as 2SLGBTQI+ (Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex, and additional sexually and gender diverse people).

Commission would expect that a portion of CCD contributions directly support Indigenous artists and Canadian diversity through eligible CCD initiatives);

- at least 25% to FACTOR or Musicaction (to be further allocated at 60% and 40% between the two funds, respectively);
- at least 25% to Radio Starmaker Fund or Fonds RadioStar (to be further allocated at 60% and 40% between the two funds, respectively); and
- the remaining 20% to eligible initiatives.

Tangible benefits

145. The Commission does not solicit competing applications for changes to the ownership or effective control of broadcasting undertakings. As such, the burden is on the applicant to show that the application is the best possible proposal and that approval of the application is in the public interest, consistent with the overall objectives of the Act.

146. One of the ways to ensure that the public interest is served is for applicants to propose financial contributions, known as tangible benefits, proportional to the size and nature of the transaction, with the goal of engendering measurable improvements to the communities served by the broadcasting undertaking subject to a change in ownership or control, as well as to the Canadian broadcasting system as a whole.

147. In Broadcasting Regulatory Policy 2014-459, the Commission maintained its approach to radio ownership transactions, including the tangible benefits allocation levels to the various funds. Currently, tangible benefits must generally represent at least 6% of the value of the transaction and be allocated as follows:

- 3% to the Radio Starmaker Fund or Fonds RadioStar;
- 1.5% to FACTOR or Musicaction;
- 1% to any eligible CCD initiative at the discretion of the purchaser; and
- 0.5% to the CRFC.

148. In the past, tangible benefits typically accounted for the largest portion of total CCD contributions. However, since there are no guarantees of radio ownership transactions occurring, this type of financial support is unpredictable.

Position of parties

149. Some parties called for the elimination of tangible benefits. Stingray Radio (Stingray) argued that the current approach may have been fair in a closed market system, but that radio now competes with services that are global in nature and have significantly

greater access to capital. It further argued that any reduction in funding could be more than made up through levies on foreign online streaming services.

150. Sirius noted that given the Commission's recognition that the commercial radio market is in decline and its assumption that radio revenues will continue to decrease, there is no policy rationale that could support an increase in the tangible benefits contribution.
151. Some parties proposed a reduction of tangible benefits. In their interventions, both the CAB and Starboard proposed that the existing rate be reduced from 6% to 3%.
152. For its part, the CRFC stated that the minimum 6% allocation for tangible benefits should remain at that level, but that the 3% allocation for the Radio Starmaker Fund and Fonds RadioStar needs to be reviewed. It added that since this fund is operated solely by the CAB, commercial broadcasters are paying themselves to support a handful of already established Canadian musicians.
153. Furthermore, the CRFC indicated that it would like to see an increased amount of support directed to community radio so as to ensure greater support for a wider range of Canadian artists and content creators. It proposed altering the formula to allocate 2% to the Radio Starmaker Fund or Fonds RadioStar and 1.5% to the CRFC.
154. ADISQ proposed that a specific percentage be allocated to the English- and French-language market funds, rather than leaving it to the discretion of the purchaser, which is currently the approach. Specifically, ADISQ proposed that the 3% of the value of the transaction to be allocated to the Radio Starmaker Fund or Fonds RadioStar and the 1.5% of the value of the transaction to be allocated to FACTOR or Musicaction be distributed as follows:
 - 3% of the value of the transaction to be allocated to the Radio Starmaker Fund and to Fonds RadioStar, with 60% of that sum to be directed to the former and 40% to the latter; and
 - 1.5% of the value of the transaction to be allocated to FACTOR and to Musicaction, with 60% of that sum to be directed to the former and 40% to the latter.
155. Perth FM Radio Inc. (Perth FM) noted that the bulk of the tangible benefit designated for music and artist development programs are allocated in larger centres. It added that a greater share of these funds could be directed to benefit the city/town served by the licensee's commercial radio undertaking by funding broadcast/journalism student internships at the local station, staff development and training, as well as expansion of the station's local news capabilities.

Commission's analysis

156. Most interveners were not in favour of an increase in the percentage (equivalent to a minimum of 6% of the value of the transaction) that must be directed to tangible benefits in an ownership transaction with some proposing that it be decreased to 3% or eliminating it entirely.
157. Due to the unpredictability of the number and size of radio ownership transactions, CCD contributions stemming from such transactions cannot be counted on as a stable source of funding for the funds and eligible initiatives.
158. However, it is still in the public interest to require that purchasers make financial contributions to CCD since the Commission does not solicit competing applications for changes to the ownership or effective control of broadcasting undertakings. Therefore, the Commission is of the view that tangible benefits should not be eliminated.
159. In regard to ADISQ's proposal to allocate a specific percentage to English- and French-language market funds, the Commission notes that in Broadcasting Regulatory Policy 2014-459, it stated that this is already happening without Commission's intervention. However, the situation has changed since 2014, with greater unpredictability regarding the number and size of ownership transactions within each linguistic market. The Commission is of the view that all funds would benefit from a more predictable and constant allocation between Radio Starmaker Fund and Fonds RadioStar and between FACTOR and Musicaction.
160. In light of the above, the Commission finds that the current tangible benefits formula (i.e., a minimum of 6% of the value of the transaction) should be maintained. The Commission also finds that the current allocation for tangible benefits should be maintained, but specifies that of the 3% previously allocated to the Radio Starmaker Fund or Fonds RadioStar, 60% must now be directed to Radio Starmaker Fund and 40% to Fonds RadioStar, and of the 1.5% previously allocated to FACTOR or Musicaction, 60% must now be directed to FACTOR and 40% be directed to Musicaction.
161. As it has in the past, the Commission may choose to exercise its discretion and depart from this policy where it is of the view that the public interest would be furthered by granting an exception, based on the record before it at the time.

Canadian musical selections

162. The Regulations define a musical selection as any live or recorded music of one minute or more in duration that is broadcast uninterrupted. Under subsection 2.2(2) of the Regulations, in order for a vocal musical selection to be considered Canadian, it must generally meet at least two of the following conditions:

- the music is or the lyrics are performed principally by a Canadian;⁶
- the music is composed entirely by a Canadian;
- the lyrics are written entirely by a Canadian; and
- the musical selection consists of a live performance that is recorded wholly in Canada, or performed wholly in and broadcast live in Canada.

163. This is generally known as the MAPL system: Music, Artist, Performance and Lyrics. There are also special cases in which a musical selection can be considered Canadian, for instance, instrumental or musical compositions and selections that qualified as Canadian under previous regulations.

164. The main objective of this system is to enable Canadian artists, lyricists and composers to be discovered more easily by Canadian audiences and to strengthen the Canadian music industry, including the creative and production components.

165. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on the definition of a Canadian musical selection and the application criteria. Furthermore, the Commission set out questions relating to the traceability and discoverability of Canadian artists, lyricists and composers for the industry and audiences.

Position of parties

166. Most parties supported maintaining the current system since it has proven itself over the years. However, some parties stated that certain criteria needed to be updated as the online era has enabled the development of new audio production techniques that are substantively different from those of the analog era, when the Commission's definitions were created.

167. Specifically, some parties proposed changes to the "Performance" criterion since physical location is no longer relevant, as well as to the "Music" and "Lyrics" criteria to allow them to be met if the composer(s) and artist(s) are primarily Canadian.

168. Music Canada proposed a six-point system wherein musical selections would be considered Canadian if they obtain three out of six points. Within that proposed system, three points could be allocated to music and lyrics, two points for artist and one point for key production components being either performed in Canada or by Canadians.

169. In its intervention, CIMA stated that the system no longer adequately reflects the realities of composing and recording music given that most songs are written by many co-writers and the recording can just as easily be done on a laptop as opposed

⁶ A "Canadian" means a Canadian citizen; a permanent resident as defined by the *Immigration Act, 1976*; a person whose ordinary place of residence was Canada for the six months immediately preceding their contribution to a musical composition, performance or concert; or a licensee, i.e., a person licensed to operate a radio station.

to in a traditional recording studio. CIMA proposed a 16-point system that includes diversity criteria, in which a musical selection must obtain six points to qualify.

170. The IMA supported this proposition and stated that a point for Indigenous content should be included, but that the Indigenous music industry must be given the authority to define what is Indigenous in any amended system.
171. The Association des professionnels de l'édition musicale (APEM), supported by SOCAN, proposed to transpose the definition developed by MétaMusique for Quebec content for Canadian content. Therefore, a musical selection would be Canadian if:
- two elements out of three are Canadian on an artistic level: writer (lyrics), composer (music) and primary artist; and
 - two elements out of three are Canadian on the industrial level: initial producer, editor, and record label.
172. The APEM also noted that it wants the Commission to be more proactive in collecting data from broadcasters and sharing this information to ensure compliance with its regulations. It further stated that the definition of Canadian content should be compatible with certification using metadata.

Commission's analysis

173. The primary issues raised by interveners relating to the identification of Canadian musical selections relate to amendments to criteria and the points system, and access to a reliable open database, including metadata on musical selections, to make it easier to identify Canadian musical selections.
174. The current criteria for “Music” and “Lyrics” are met only if the music is composed, or the lyrics are written entirely by a Canadian. However, those are often collaborative efforts, and, in an increasingly connected world, it is not uncommon for artists from different countries to be involved. The FACTOR and Musicaction funds, as organizations associated with the Department of Canadian Heritage, already reflect this reality by considering writers and composers together and requiring that at least 50% of participants in the creation of a selection be Canadian.
175. Therefore, the Commission is of the view that allowing the “Music” and “Lyrics” criteria to be satisfied if a musical selection is primarily composed or written by Canadians could better reflect current creative processes while still promoting and supporting Canadian artists.
176. The “Performance” criterion also led to numerous interventions from the music industry. Currently, this criterion directly concerns the geographic location where the musical selection is recorded, and is often problematic. The Commission notes that this criterion is by far the one least met, often due to lack of information, and rarely a deciding factor in obtaining Canadian certification status.

177. Since the “Performance” criterion is only subject to self-assessment rather than established through standards or stricter systems such as those related to revenue collection or copyright regimes, it is very difficult to verify or identify, and evidence to make the determination is often incomplete.
178. In general, interveners proposed amending this criterion to move the emphasis from the recording location to the nationality of the producer of the musical selection.
179. However, there is no universally accepted definition of producer. While the Commission could set a definition, the Commission notes that there was insufficient evidence to that effect on the public record. Further, the information that could be useful in identifying a producer is not currently attached to musical selections. As such, it would still be necessary to rely on self-identification by the contributors of a given musical selection or on broadcasters to manually add it to the selection.
180. Therefore, the Commission considers that this modification would not resolve the problems with the criterion, as it would remain administratively burdensome to determine for the industry, inaccurate and difficult to verify, and would continue to be often incomplete or missed. Consequently, the Commission is of the view that changing the criterion so that it refers to the nationality of the producer instead of the production location will not facilitate the identification of Canadian musical selections.
181. The Commission is currently developing a digital monitoring system and an open database to simplify and automatize the process of identifying musical selections. This system relies on probative data that can be verified and anchored in existing metadata that are internationally standardized, such as the International Standard Recording Code (ISRC), the International Standard Name Identifier (ISNI) and the International Standard Musical Work Code (ISWC), codes that can be used to confirm the accuracy of the information for any musical selection. Such accuracy is essential to ensure the database is of high quality and that new selections can eventually be added to it automatically. Once it is made public, this database will greatly facilitate identification of Canadian musical selections and mitigate the risks of non-compliance with regulatory requirements.
182. Recognizing that the current “Performance” criterion is causing confusion, is often left out, or is placing an administrative burden on the industry, the Commission has tested various modifications to it to see if it could be improved and made compatible with the forthcoming database. Having found no satisfactory alternative, the Commission considers that this criterion should be removed from the process of identifying Canadian musical selections. The Commission acknowledges that this removal could impact some selections, but considers that it would be offset by the added flexibility granted to other criteria noted above.
183. Furthermore, the Commission notes that removing one criterion from the system would have a direct impact on the points system since the proposed model would be comprised of three elements instead of four.

184. Many interveners proposed a system based on more than four points, to include a certain number of criteria for Indigenous artists and artists from diversity groups. However, the Commission considers that the objectives of improving the representation of Indigenous artists and artists from diversity groups would be better met by incorporating other elements in the regulatory framework that are specifically designed to reach those objectives.
185. Some interveners also suggested giving more importance to the “Artist,” either by considering that any selections performed by a Canadian would be deemed Canadian or by awarding two points to the selection, which would yield the same result.
186. While the performers are the most visible, easily recognizable and identifiable contributors for audiences, the system is intended to support a variety of Canadian artists involved in the creation of musical selections. Therefore, the Commission considers that granting Canadian status to any selection that includes a Canadian performer may fail to support the contribution of other artists (i.e., songwriters and composers) to the creation of the musical selection, in addition to presenting the risk of reducing the diversity in the selections broadcast.
187. As such, the Commission is of the view that the adoption of a three-point system in which a musical selection must obtain at least two points to be considered Canadian would be the best option. The Commission considers that this approach will foster greater inclusion and acknowledge Canadian songwriters in the act of music creation, even in the context of collaborations, without unduly prioritizing the performers who are capable of having careers abroad and who no longer depend on airtime for the majority of their revenue.
188. The Commission acknowledges that, in specific cases, it would be impossible for a selection to be awarded the two required points. The Commission therefore proposes to allow exceptions where only a single point would be necessary for the selection to be considered Canadian. This would apply to all solely instrumental, classical, traditional jazz, world or traditional music repertoire.
189. The Commission notes that, as the conditions for a musical selection to be considered a Canadian selection are set out in the Regulations, it cannot change them without the Regulations being amended.
190. In light of the above, the Commission intends to launch a proceeding seeking comments on proposed amendments to the Regulations whereby a musical selection would be considered Canadian if it meets at least two of the three following conditions:
- the music is, or the lyrics are, performed principally by a Canadian;
 - the music is composed principally (at least 50%) by a Canadian; or
 - the lyrics are written principally (at least 50%) by a Canadian.

191. The Commission also notes that, as part of that proceeding, it would be open to considering alternatives to the “Performance” criterion were they beneficial to the industry, easily implementable through existing standardized metadata within the digital monitoring system and database.
192. The Commission also intends to seek comments on proposed amendments to the Regulations to maintain the status of Canadian musical selections that have been considered Canadian under the current MAPL system, as well as to apply the new criteria and points to all existing and new musical selections going forward. This would mitigate any negative impact on existing musical selections created by any future amendments to the Regulations while promoting flexibility and diversity when identifying Canadian selections.

Content categories and subcategories

193. Content categories and subcategories are used by the Commission and radio licensees for the purpose of classifying musical selections, defining station formats and calculating Canadian content.
194. The Commission has traditionally considered content categories and subcategories to be an important tool for identifying and encouraging musical variety in the broadcasting system as a whole. The content categories and subcategories for radio are set out in Broadcasting Regulatory Policy 2010-819 and are referenced in the Regulations.
195. The two music content categories for commercial radio stations are content category 2 (Popular Music) and content category 3 (Special Interest Music).
196. Content category 2 includes pop, rock and dance, country and country-oriented, acoustic, and easy listening genres. All musical selections listed in the charts such as Adult Contemporary (AC), Hot AC, Pop Adult, Album-Oriented Rock (AOR), Contemporary Hit Radio (CHR), Alternative, Modern, Adult Alternative, Active Rock, Dance, R&B, Urban, and Techno, compiled and published by music trade publications, belong to content subcategory 21: Pop, rock and dance, and are included here. This category is subject to a 35% Canadian content quota during each broadcast week and during peak hours.
197. Content category 3 includes musical selections from the concert, folk and folk-oriented, world beat and international, jazz and blues, non-classic religious and experimental genres. Licensees of commercial radio stations are not required to broadcast Special Interest Music unless they are subject to a specific condition of licence to this effect. Content category 3 is subject to a 10% Canadian content quota, while content subcategory 31: Concert is subject to a 25% Canadian content quota, and content subcategory 34: Jazz and blues, a 20% Canadian content quota.
198. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on whether content quotas were still appropriate, whether the availability of recordings in specialty genres (i.e. content category 3) was still limited, whether some

genres should be protected, and what the impact would be should content categories be eliminated.

199. The Commission also sought comments on a proposal stemming from the review of the regulatory framework for FVM applicable to the French-language commercial radio sector (the FVM proceeding), which was initiated by Broadcasting Notice of Consultation 2015-318,⁷ to move elements from content subcategory 21: Pop, rock and dance (specifically urban, hip hop and rap music) and content subcategory 22: Country and country-oriented to content category 3.

Position of parties

200. In its intervention, the CAB opposed moving elements from content subcategories 21 and 22 to content category 3. Instead, it proposed eliminating content category 3 requirements for non-specialty, mainstream commercial radio stations.
201. The CAB also proposed that the Commission update the 5% relief on broadcast requirements for Oldies formats⁸ by setting the benchmark year to 2001 for English-language licensees and 2010 for French-language licensees.
202. For its part, Leclerc supported moving elements of subcategories 21 and 22 to content category 3 and also requested flexibility in regard to the management of musical catalogues for content category 3 musical selections by not moving them to content category 2 when they are listed on charts.
203. Furthermore, Leclerc proposed a number of changes to the administrative tools and procedures made available to broadcasters by the Commission. These procedural changes would allow popular music stations to change to specialty music formats simply by notifying the Commission, which would expedite decisions on specialty stations. Moreover, the Commission would make chart publications available to broadcasters.
204. The Associations supported maintaining the Commission's approach to categorizing musical selections. They considered that the approach remains useful for the commercial radio sector and that its elimination could reduce funding to specialty musical artists. They noted that improved tagging, metadata and searchable artist catalogues, including a catalogue for the music of Indigenous artists, could help broadcasters to find a greater diversity of artists.

⁷ Since the FVM proceeding could not be completed, the Commission indicated in Broadcasting Notice of Consultation 2020-374 that the issues that would have been addressed in that proceeding would be addressed during the current proceeding. The content of the public record from the FVM proceeding was placed on the public record of the present proceeding.

⁸ A condition of licence allows commercial radio stations to broadcast less than 35% Canadian content of popular music for Oldies music: in any broadcast week where at least 90% of the popular music aired consists of selections released before 1 January 1981, at least 30% must be Canadian, both on a weekly basis and between 6:00 a.m. and 6:00 p.m., Monday through Friday. This is not a standard condition of licence and broadcasters must apply to have it added to their licence.

205. In addition, the Associations stated that moving subcategories 21 and 22 to content category 3 could negatively impact Canadian artists in these genres. Instead, they proposed moving soul and doo wop, rhythm & blues from the fifties and sixties, pre-1965 rock & roll, rockabilly, neo-rockabilly, surf and neo-surf, progressive rock, reggae, dancehall, ska and rocksteady, and funk from content category 2 to content category 3 due to the lack of Canadian selections available in these genres. Moreover, the Associations proposed moving spiritual music to content subcategory 35: Non-classic religious, and to change the wording so that it refers to music of all religious faiths.
206. Starboard supported maintaining the current approach to musical selections and genres, stating that eliminating these categories could lead to stations migrating to more mainstream formats, which would be detrimental to musical variety in the market.

Commission's analysis

207. The Commission notes that the majority of interveners agreed that the categorization of musical genres remains a necessary tool for broadcasters and is an important tool for the Commission. Accordingly, the Commission considers that it should continue to categorize musical selections.

Content subcategory 35: Non-classic religious

208. The Commission notes that the definition of content subcategory 35 may be perceived as restrictive and should be broadened to more clearly represent the diverse spiritual and religious identities of Canadians.
209. In light of the above, the Commission amends the definition of content subcategory 35: Non-classic religious as follows:

Content Subcategory 35: Non-classic religious

This refers to spiritual and religious music of all faiths.

210. The Commission considers that this amendment will make the definition more inclusive and will provide more flexibility to broadcasters that are subject to a condition of licence for this content subcategory by allowing them to add more variety to their programming and better represent the diversity of Canadian society today.

Moving elements from content subcategories 21: Pop, rock and dance and 22: Country and country-oriented to content category 3 (Special Interest Music)

211. The lower Canadian content requirement for content category 3 musical selections compared to content category 2 was set because of the more limited availability of Canadian recordings in specialty genres.

212. Therefore, moving urban, hip hop and rap, country and country-oriented to content category 3 may have the effect of reducing discoverability and funding to Canadian artists of these genres since there will be less of an obligation for radio stations to broadcast Canadian music in these styles. Furthermore, the Commission has found no indication that there was a lack of availability of Canadian selections in these very popular genres.
213. In light of the above, the Commission finds that it would be appropriate for urban, hip hop and rap, country and country-oriented music to remain in their current subcategories.

Content category 2 (Popular Music) and content subcategory 21: Pop, rock and dance

214. The Commission notes that interveners emphasized the onerous administrative burden associated with determining how content category 2 musical selections are categorized for compliance purposes.
215. Specifically, the way that content subcategory 21 is currently defined means that any musical selection from content category 3 can be moved to content category 2 if it begins to receive more airplay and moves higher in the charts.
216. In the Commission's view, revising content subcategory 21 would facilitate the provision of the diverse programming content that serves the needs and interests of Canadians.
217. In light of the above, the Commission amends the definition of content subcategory 21: Pop, rock and dance to eliminate the reference to charts, as follows:

This refers to music from the entire pop, rock and dance music spectrum. Examples include all types of rock music, including soft rock, hard rock, classic rock, heavy metal, modern rock, alternative rock, jazz rock, folk rock, and blues rock. It also includes pop, rock & roll, rhythm & blues from the fifties and sixties, soul, dance, techno, rap, hip hop, urban, and contemporary rhythm & blues.

218. This amendment will allow for musical selections that chart to continue to be playable by specialty radio stations, enhancing their competitive position without reducing programming diversity. Furthermore, the amendment will ensure that artists and their designated representatives retain artistic ownership over the identification of a musical selection's genre.
219. Broadcasting Regulatory Policy 2022-333, also issued today, which outlines the changes noted above pertaining to content subcategory 35: Non-classic religious and content subcategory 21: Pop, rock and dance, replaces Broadcasting Regulatory Policy 2010-819. Furthermore, the Commission intends to launch a proceeding to propose amendments to the Regulations to change the reference to Broadcasting Regulatory Policy 2010-819 to refer to Broadcasting Regulatory Policy 2022-333.

Process for a station to change to a specialty station format

220. As set out in Public Notice 1995-60, radio stations operating in the specialty FM format specialize in the broadcast of, for example, ethnic programming, news or talk programming, traditional or special interest music programming, or a combination of different kinds of special programming. The Commission considers that a separate format for specialty radio stations is, among other things, a useful tool for increasing the variety of programming available to listeners.
221. In its intervention, Leclerc proposed permitting popular music radio stations to become specialty radio music stations by way of notifying the Commission 30 days prior to the change in programming format.
222. The Commission is of the view that a change to a radio station's format is a significant request. As such, the Commission considers that simply notifying the Commission of such a change would not ensure that important features of the licensing process, such as market impacts, programming diversity and the individual circumstances of a radio station would be adequately addressed.
223. In light of the above, the Commission finds that a licensee wishing to change its station's format to that of a specialty radio station should continue to be required to file a Part 1 application under the *Canadian Radio-television and Telecommunications Rules of Practice and Procedure* requesting that its conditions of licence be amended.

Canadian content requirements for content category 2 (Popular Music)

224. As set out in section 2.2 of the Regulations, radio stations holding commercial licences must, in a broadcast week, devote at least 35% of their musical selections from content category 2 (Popular Music) to Canadian selections broadcast in their entirety.
225. A broadcast week is defined as seven consecutive broadcast days, beginning on Sunday. A broadcast day begins at 6:00 a.m. and ends at midnight the same day. To ensure that Canadian musical selections are not relegated to off-peak hours, subsection 2.2(9) of the Regulations requires that at least 35% of the Popular Music broadcast between 6:00 a.m. and 6:00 p.m., Monday to Friday, be Canadian.
226. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on the impact of Canadian content quotas on Canadian broadcasters, artists and audiences.

Position of parties

227. Most interveners submitted that Canadian content requirements on commercial radio stations have had a significant and positive impact on the discoverability of Canadian music and have contributed to the development of an independent music industry in Canada.

228. The CAB indicated that, in the current environment marked by increased consumer choices and changing music listening habits, stringent Canadian content requirements are negatively affecting radio broadcasters' viability and do not represent consumer demand. It further stated that a shift is needed, whereby the number one priority going forward should be to maintain the viability of private radio, including its role as a local news and information medium.
229. Specifically, the CAB proposed that Canadian content requirements for Popular Music be reduced to 25%, a level which it stated would still be 2.5 times higher than the market share of Canadian music on streaming platforms. In addition, the CAB recommended an emerging artist credit so that every spin of an emerging artist would count as 1.5 spins against Popular Music requirements.
230. The OAB stated that financial incentives could be introduced to help achieve content levels higher than the CAB's proposed 25%.
231. On the other hand, parties from the music sector viewed Canadian content requirements for Popular Music as a key mechanism to ensure the visibility of Canadian artists and the remuneration of songwriters and music publishers. Most interveners from the music sector suggested that the Commission maintain the current Canadian content requirement at 35% for Popular Music, and that further requirements be introduced to support greater diversity in the Canadian musical selections broadcast by commercial radio stations.
232. Specifically, the CIMA stated that, in addition to maintaining Canadian content requirements for Popular Music at 35%, the Commission should address the over-representation of well-known Canadian artists in the current musical selections heard on commercial radio either by mandating that a certain portion of the quota be dedicated to emerging artists or by creating a maximum cap for the portion of the quota that can be filled by established Canadian artists.
233. Music Canada proposed a minimum requirement of 10% of musical selections devoted to emerging Canadian artists and a minimum requirement of 10% of musical selections devoted to Canadian artists from sovereignty-affirming or equity-deserving groups.
234. For its part, ADISQ recommended that the Commission set out expectations for English-language commercial radio stations in Quebec to dedicate 5% of their musical selections to FVM in each broadcast period in order to increase the discoverability of FVM. ADISQ also proposed various requirements to increase the discoverability of emerging artists, Indigenous artists, as well as artists from official language minority communities (OLMCs) and equity-deserving groups.
235. Other interveners, including Friends of Canadian Broadcasting (Friends) and FRPC, opposed reductions to Canadian content requirements. Specifically, the FRPC stated that it doubted that programming on commercial radio stations is predominantly Canadian, as required by the Act, and indicated that reducing the level of Canadian content in the music broadcast on commercial radio stations would thus transgress the Act.

Commission's analysis

236. The Commission notes the consensus from the public record that Canadian content requirements have contributed to the promotion and discoverability of Canadian music since their introduction. By providing shelf space for Canadian artists to showcase their talent, content requirements have helped expose audiences to homegrown music while allowing many Canadian music artists and creators to develop their careers and generate revenues from the performance of their musical works through radio.
237. Along with CCD contribution requirements, Canadian content requirements have also helped the Canadian independent music recording sector to develop, ensuring a constant supply of Canadian recordings for broadcasters to add to their playlists.
238. However, radio listening in Canada has been trending downwards over the past seven years, while Canadians' time spent with streaming services has steadily increased and younger Canadians are spending less time than ever before listening to radio.
239. Nonetheless, the Commission notes that Canadians continue to tune in to radio in large numbers, with nearly seven in ten (68%) Canadians reporting listening to commercial AM/FM radio at least weekly, according to the 2020 Communications Market Report.
240. Based on past successes, on the continued amount of radio listening and on comments put forward by interveners on the public record of the present proceeding, the Commission considers that Canadian content requirements remain an efficient and relevant tool to ensure the presence of Canadian music on commercial radio stations and to ensure that audiences benefit from the exposure to such content.
241. However, the Commission notes that Canadian commercial broadcasters considered that stringent Canadian content requirements limit their ability to compete against music streaming services, and therefore asked the Commission that they be reduced.
242. The Commission notes that, over the past three years, few radio stations assessed during monitoring evaluations were found to be in non-compliance with their regulatory requirements regarding the broadcast of Canadian Popular Music musical selections. In addition, some commercial radio broadcasters air more Canadian Popular Music musical selections than the required 35% of their musical selections on their own initiative.
243. Furthermore, applications for new licences under a competitive process regularly include commitments to offer a greater proportion of Canadian Popular Music than is required by the Regulations.
244. In the Commission's view, the above seems to indicate that a 35% quota is both achievable for broadcasters and desirable from an audience perspective.

245. While the Commission is sensitive to the increasingly competitive music consumption landscape and the overall shift of advertising dollars towards online services, it is concerned that analyses provided by broadcasters have not demonstrated how Canadian content requirements are impacting their financial viability.
246. In a recent analysis set out in Broadcasting Decision 2021-140, the Commission examined a random sample of 12 radio stations from a range of markets and ownership groups that have the single non-standard requirement to broadcast a minimum of 40% Canadian content from content category 2. This analysis found that the average profit before interest and taxes (PBIT) of the sample exceeded that of the average commercial FM radio station in each of the years from 2015 to 2019.
247. In its intervention, the CAB noted that the current 35% requirements for Popular Music are out of sync with consumers' taste and that they are more than three times the market share of Canadian artists appearing on domestic streaming charts.
248. The Commission questions this argument about streams representing the true market level, as the algorithms widely used by streaming platforms to recommend content to users may play a significant role in promoting certain artists and their music. Further, it is unknown whether radio and streaming services are used for the same purposes.
249. Canadian content requirements are intended to contribute to the implementation of the broadcasting policy set out in the Act. This includes, among other things, that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming, and private networks and programming undertakings should, to an extent consistent with the financial resources available to them, contribute significantly to the creation and presentation of Canadian programming.
250. The Commission notes concerns expressed by interveners that a reduction in Canadian content requirements would have a significant negative impact on the royalties received by songwriters and music publishers, as well as on the overall discoverability of Canadian songs and artists by Canadian audiences.
251. While broadcasters proposed incentives in the form of Canadian content credits to offer greater support for emerging artists, the Commission notes that such credits could have the negative effect of reducing the overall number of Canadian Popular Music musical selections aired during a broadcast week.
252. The Commission also notes that new legislation with substantial changes to the Act may lead to a broader examination of the role streaming audio services play in the Canadian music ecosystem. Questions regarding their potential contributions and types of contributions, as compared to existing radio and audio services, may well be re-examined if such legislation comes into force. Should such legislation not come into force, the Commission will closely monitor the evolution of business models and will be ready to take other actions or launch other proceedings, as needed.

253. The Commission considers that while the public record has underlined the changing environment and revenue decline for commercial radio, it does not indicate that broadcasters lack the financial resources to meet their current Canadian content requirements. Therefore, the Commission is of the view that the compelling need to reduce the level of Canadian content requirements for Popular Music broadcast on commercial radio stations has not been demonstrated.

254. In light of the above, the Commission considers that the minimum requirement of 35% for the broadcast of Canadian content category 2 musical selections remains efficient and flexible enough for broadcasters to achieve, and that this level continues to strike the appropriate balance between the interests of listeners, artists and broadcasters.

Canadian content requirements for content category 3 (Special Interest Music)

255. As noted above, licensees of commercial radio stations that broadcast Special Interest Music musical selections must devote the following percentages to Canadian musical selections:

- 10% of musical selections from content category 3 (Special Interest Music);
- 25% of musical selections from content subcategory 31: Concert; and
- 20% of musical selections from content subcategory 34: Jazz and blues.

256. Pursuant to section 2.2 of the Regulations, these Canadian musical selections must be scheduled in a reasonable manner throughout each broadcast day.

257. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on the impact of Canadian content category 3 musical selection quotas on Canadian broadcasters, artists and audiences.

Position of parties

258. In its intervention, the CAB indicated that the need to provide diversity on Canadian radio is diminished by the presence of digital music services. It recommended that all Canadian content requirements for content category 3 musical selections be eliminated for non-specialty format radio stations. Should these requirements be maintained, the CAB recommended that they be reduced.

259. In reply to the CAB's proposal, the FRPC indicated that eliminating those Canadian content requirements for mainstream radio stations would negatively impact diversity, resulting in all stations sounding the same.

260. The OAB indicated that gold-based formats are having difficulties meeting Canadian content requirements because of a limited inventory.

261. The Canadian Christian Radio Association (CCRA) stated that content category 3 quotas are achievable, but argued that increasing them would be onerous as good quality Canadian recordings are difficult to find.
262. Similarly, the Associations indicated that it is not difficult to find Canadian content category 3 music. However, they noted that they would benefit from improved tagging, metadata and searchable artists' catalogues.

Commission's analysis

263. Canadian content requirements for Special Interest Music contribute to achieving the broadcasting policy objectives of the Act, whereby the Canadian broadcasting system should encourage the development of Canadian expression by providing a wide range of programming, and make predominant use of Canadian creative and other resources in the creation and presentation of programming.
264. The Commission notes that the public record provides very few comments that either address the level of content category 3 requirements or suggest that the level be modified, other than those submitted by the CAB.
265. In regard to the CAB's proposal to lift Canadian content requirements for content category 3 musical selections for mainstream commercial radio stations, the Commission considers that when a non-specialty radio station offers Special Interest Music, it should continue to ensure that a portion of that content is Canadian. In the Commission's view, the current 10% is low and easily achievable.
266. This lower Canadian content requirement for content category 3 was historically set because of the more limited availability of Canadian recordings in specialty genres. The Commission considers that the CAB has not provided compelling evidence that this has been exacerbated or even that it remains the case. In addition, the Commission notes that other interveners expressed a different view.
267. The production of sound recordings is more accessible than ever before and has led to a wealth of musical content from which consumers can choose. The Commission considers that this abundance of music has been reflected in a variety of genres, including Canadian Special Interest Music.
268. The Commission also considers that the above-noted proposed changes to the identification of Canadian musical selections, along with the changes to the wording of content subcategory 21 to eliminate references to charts, would result in more Special Interest Music musical selections qualifying as Canadian. This would create a larger pool of qualifying Canadian Special Interest Music for the purpose of Canadian content requirements.
269. In light of the above, the Commission finds that the minimum of Canadian content requirements of 10% for musical selections from content category 3 (Special Interest Music), 25% for musical selections from content subcategory 31: Concert, and 20% for musical selections from content subcategory 34: Jazz and blues remain appropriate.

Definition of a FVM selection

270. While there is currently no official definition of a FVM selection, the Commission considers a musical selection as FVM if more than 50% of the duration of the vocal portion of the selection is in French.
271. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on the need to codify a definition of a FVM selection in the Regulations given the increasing presence of bilingual music in French-language commercial radio stations' programming.

Position of parties

272. In their intervention, the Associations supported the Commission's definition of a FVM selection. However, they expressed concerns about how the percentage of the vocal portion of a song would be calculated. They indicated that programmers sometimes have access to incomplete metadata and may have to estimate this percentage. To resolve this problem, the Associations proposed that the Commission establish a database of songs that meet the proposed FVM requirement.
273. For its part, Leclerc noted the complexity of the Commission's current practice for broadcasters to have each bilingual song analyzed. It also proposed that the Commission maintain a registry of songs that meet the requirement.

Commission's analysis

274. Most interveners supported the Commission's proposal to codify the definition of an FVM selection in the Regulations. However, they also indicated that determining whether a song is French by calculating the percentage of the duration of the vocal portion of the selection is complex and that miscalculations could be made. Intervenors noted that this could be alleviated by creating a database containing French-language musical selections codified by the Commission.
275. As noted above, such a database will be made available to broadcasters in the near future. However, the digital monitoring system and database may not be able to use a duration-based definition to automatically classify the selections from different sources that could be added to the database in the future. Therefore, instead of relying on the length of the vocal portion of the piece, other options will have to be considered, such as counting the words in the lyrics, to determine whether the selection can be counted as a French-language musical selection or not. To determine the most appropriate way to code FVM selections in the future, the database will need to be tested.
276. In light of the above, the Commission considers it appropriate to maintain its current practice of considering a musical selection as FVM if more than 50% of the duration of the vocal portion of the selection is in French. For clarity, the Commission notes that onomatopoeia or other non-intelligible vocal parts (known as "non-lexical vocables") are not considered part of the vocal portion when calculating its duration.

277. The Commission may, in the future, consider codifying a definition of a FVM selection in the Regulations if a definition of a FVM selection that is compatible with its digital monitoring system and database is found.

FVM quotas

278. Pursuant to subsection 2.2(5) of the Regulations, licensees of French-language commercial radio stations must devote at least 65% of the content category 2 (Popular Music) vocal musical selections they broadcast during each broadcast week to French-language musical selections broadcast in their entirety.
279. To ensure these selections are not broadcast during periods with relatively small audiences, licensees must also devote at least 55% of content category 2 vocal musical selections they broadcast between 6:00 a.m. and 6:00 p.m., Monday to Friday, to French-language musical selections broadcast in their entirety.
280. As noted above, in Broadcasting Notice of Consultation 2015-318, the Commission initiated the review of the regulatory framework for FVM applicable to the French-language commercial radio sector. However, the 2015 FVM proceeding could not be completed.
281. In Broadcasting Notice of Consultation 2020-374, the Commission indicated that the issues raised during the 2015 FVM proceeding would be addressed during the present proceeding. Therefore, the content of the public record from the 2015 FVM proceeding was placed on the public record of the present proceeding.

FVM regulations

Position of parties

282. During the 2015 FVM proceeding, the Regroupement des radiodiffuseurs de langue-française⁹ requested that the FVM quota be lowered from 65% to 35%, but that it be made up entirely of Canadian music.
283. For its part, ADISQ proposed that the general quota for French-language music be reduced from 65% to 60%, with the 5% difference being devoted to Quebec music in English or other languages. It also suggested that the 55% prime-time quota be extended to weekends.
284. Since the 2015 FVM proceeding, the positions of the various parties have evolved.
285. Overall, broadcasters expressed the view that the Regulations as they relate to FVM need to be more flexible, realistic and achievable in an unrestricted environment where streaming music services have no obligations. Broadcasters argued that FVM quotas are out of step with audiences' interests and listening habits and that this has had an impact on broadcasters' revenues.

⁹ At the time of the 2015 FVM proceeding, the Regroupement des radiodiffuseurs de langue française was composed of the Association des radios regionaux francophones, Attraction Radio, Bell Media Inc., Cogeco Media Inc., Leclerc, and RNC MEDIA Inc.

286. In its reply, ADISQ indicated that the challenges faced by broadcasters have nothing to do with quotas, which are intended to stimulate listening habits, not reflect them. It stated that it does not support the broadcasters' request that FVM quotas be based on audience listening habits.
287. ADISQ proposed quotas of 55% FVM during peak times and 45% during off-peak times. It further indicated that its proposal is conditional on the Commission implementing an automated verification system to confirm station compliance on a regular basis, establishing full transparency and having zero tolerance for circumvention schemes.
288. For its part, the majority of the music industry interveners supported increasing or maintaining FVM quota levels.
289. The Regroupement de titulaires de licences de stations de radio commerciale de langue française (Regroupement), which consists of French-language commercial radio stations operated by the members of the Association des radios régionales francophones, Arsenal Media Inc., Bell Media Inc., Cogeco Media Inc. and RNC MEDIA Inc. (RNC), submitted that the new regulatory framework should be flexible and not impose additional regulatory requirements. In addition, the Regroupement proposed maintaining the status quo for FVM quotas until the Commission determines what measures it will take to restore a competitive balance with digital platforms.
290. Leclerc proposed music quotas based on a fixed number of FVM selections to be broadcast rather than a percentage. Specifically, Leclerc proposed quotas of 900 FVM selections during the broadcast week from Sunday to Saturday between 5:00 a.m. and 1:00 a.m., and 300 FVM selections, including 275 Canadian selections, broadcast between 5:00 a.m. and 7:00 p.m., Monday to Friday.
291. Leclerc also noted that French-language commercial popular music stations are increasing their spoken word content to decrease the time devoted to music.
292. For its part, ADISQ, supported by the APEM, proposed that for a radio station to be considered a music station, it must devote at least 50% of its peak-time programming to music.
293. The majority of individual interveners supported maintaining or increasing the FVM quotas. The public opinion survey conducted as part of Phase 1 of the present proceeding also showed that the vast majority of Francophones supported the current requirements regarding FVM.

Commission's analysis

294. Both Leclerc's and ADISQ's interventions mentioned the time devoted to music on radio stations. The Commission notes that a music radio station is not in violation of any regulations if it chooses to increase its spoken word content, regardless of the time of day, as long as it does not exceed 50% spoken word content in the broadcast week.

295. Moreover, the creation and broadcast of spoken word programming remains one of the advantages of traditional radio, both in the eyes of listeners and to differentiate it from online services.
296. Accordingly, the Commission is of the view that, as long as spoken word content remains within the permitted limits, including it in the program schedule allows local stations to adapt to local realities and to reflect and inform Canadians, and thus meet the objectives of the Act.
297. Leclerc was the only intervener to propose a completely new approach to regulating FVM by suggesting that any requirement be based on the number of selections broadcast rather than on a percentage. Although Leclerc's proposal has merit, the Commission considers that it also has certain disadvantages.
298. Specifically, basing the rules on the absolute number of selections could result in a decrease in FVM selections compared with other selections for radio stations that broadcast more music. For radio stations that have a greater mix of spoken word and music content, Leclerc's proposed approach could be more prescriptive than the current percentage approach and remove some flexibility in creating a station's programming schedule. Consequently, the Commission considers that the system proposed by Leclerc would not be fair to the different types of commercial music stations.
299. Although French-language broadcasters generally recommended the status quo for the FVM quotas, they also stated that FVM quotas are out of step with listeners' interests and that this has an impact on their revenues.
300. To illustrate this position, broadcasters pointed to listening habits on online streaming sites and album sales. As noted above, there is no evidence to suggest that listening to traditional commercial radio and listening online or purchasing albums are interchangeable activities that serve the same purpose for listeners, not to mention the influence of streaming platforms' algorithms.
301. The Commission notes that the regulatory policy is not intended to be an exact reflection of listening habits, but serves to facilitate the Canadian broadcasting system's attainment of the Act's objectives, including safeguarding, enriching and strengthening the cultural, political, social and economic fabric of Canada and encouraging the development of Canadian expression by providing a wide range of programming that reflects linguistic variety throughout the country.
302. Furthermore, broadcasters' assertions that the FVM quotas is out of step with listeners' interests and that broadcasters have to find ways to "mitigate" its impact are also diametrically opposed to the comments received from individuals and to the results of the public opinion survey that was conducted as part of Phase 1 of the present proceeding.

303. Moreover, broadcasters indicated a need for less restrictive regulations because of competition with English-language radio stations, which have no FVM obligations. However, the economic data tends to show that the decline in audience tuning for French-language commercial radio stations, despite their additional FVM obligations, has not been as steep as that of English-language radio stations. As such, there is no evidence that FVM quotas are having a detrimental effect on French-language radio stations by undermining their business models or competitiveness, thereby requiring a reduction in the quotas.
304. Notwithstanding the above, the Commission considers that it should attempt to minimize the barriers to implementation of its policies for broadcasters. One of these barriers seems to be the identification of FVM selections. The Commission notes that the creation of a database of FVM selections would eventually help to reduce the regulatory burden of the existing policy.
305. In light of the above, the Commission considers that it would be appropriate to maintain the quota-based system for FVM at the current level of 65% in each broadcast week and 55% between 6:00 a.m. and 6:00 p.m., Monday to Friday.

Incentives and other measures

Position of parties

306. Some parties proposed different FVM credits. These include a FVM selection by an emerging artist or a Canadian artist from an OLMC counting as 1.5 FVM selections for the purposes of calculating regulatory obligations; foreign-language musical selections by Quebec artists being considered as FVM up to a point; and the quotas being reduced if the FVM selections broadcast were mainly those released more recently, within the past ten years.
307. In its reply, ADISQ opposed the proposed measures as they would have the effect of reducing the broadcast of FVM overall. Instead, it proposed that 50% of the Canadian FVM selections broadcast be composed of works by emerging artists or new works (released in the 24 months preceding the broadcast date) by established artists.
308. ADISQ also proposed that the Commission set an expectation that English-language radio stations in Quebec broadcast 5% FVM, and that French-language radio stations devote 5% of musical selections broadcast to Quebec-produced English-language vocal musical selections in each peak listening period.
309. Similarly, Leclerc proposed that English-language radio stations in Quebec devote at least 10% of their programming to FVM and that French-language radio stations in those markets receive an equivalent reduction in their FVM broadcast obligations.

Commission's analysis

310. The Commission is of the view that each regulatory obligation must be justified in its own right and meet specific objectives.

311. As noted above, a musical selection quota is intended to be the baseline level to which listeners should be exposed so that the various objectives of the Act are met, and should not be reduced for the benefit of other purposes.
312. Thus, while a FVM quota can be used to increase the discoverability of this type of music and address the interests of listeners, it should not be used to solve other shortcomings in the system. The Commission considers that if it were to conclude that it should use its powers to promote the broadcast of works by emerging or OLMC artists, it should do so with a regulatory tool specifically designed for that purpose, without undermining the representation of FVM. The Commission notes that the implementation of the digital monitoring system will provide a better overview of what is broadcast on commercial radio and identify any gaps in what is being broadcast on the Canadian broadcasting system.
313. In regard to ADISQ's proposed requirement that 50% of FVM selections consist of works by emerging artists or new music, the Commission is of the view that this approach could make the regulatory framework unduly rigid for broadcasters whose business models or programming styles is less compatible with new music or music by emerging artists.
314. In light of the above, the Commission will not introduce incentives or other measures that will reduce the overall FVM quota.

Definition of broadcast week and peak listening period

315. Current broadcast periods on which the Commission sets Canadian and FVM content quotas are as follows:

- broadcast week (seven consecutive broadcast days, beginning on Sunday; the broadcast day begins at 6:00 a.m. and ends at midnight the same day); and
- peak listening period (6:00 a.m. to 6:00 p.m., Monday to Friday).

316. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on whether the current peak listening period (6:00 a.m. to 6:00 p.m., Monday to Friday) allow for maximum access to and promotion of Canadian and FVM content.

Position of parties

317. In its intervention, the CAB proposed that the peak listening period for the purpose of Canadian content quotas be extended to 5:00 a.m. to 7:00 p.m., Monday to Friday. This was supported by ADISQ in its reply comments.

318. The CAB also proposed that the broadcast week be extended from Sunday to Saturday, 5:00 a.m. to 1:00 a.m.

319. RNC, Leclerc and the Regroupement also recommended these extensions to the peak listening period and broadcast week.

Commission's analysis

320. The terms “broadcast day” and “broadcast week” are defined in the Regulations and are applied consistently by the Commission to all Canadian radio licensees, whether they are commercial, Indigenous, community or campus radio licensees.
321. Interveners proposed to extend the broadcast day and peak listening period by two hours per day. In the Commission’s view, to achieve the objectives of the Regulations and for the Regulations to remain relevant, they must maintain broadcasting requirements for periods when the potential audience for, and the potential discoverability of Canadian music and FVM are greatest.
322. According to Numeris data from fall 2019 and fall 2020, national weekday listening hours increased steeply at 6:00 a.m. and effectively doubled between the 5:00-6:00 a.m. period and 6:00-7:00 a.m. period. The data also shows a decline in listening hours in the late afternoon, which becomes more pronounced after 5:00 p.m. The trends are similar for the French-language market. Accordingly, the Commission is of the view that extending the peak listening period to 5:00 a.m. to 7:00 p.m. would not necessarily be more reflective of audience listening habits.
323. Furthermore, changes in time periods to which broadcasters’ obligations apply may result in implementation costs for them, thereby increasing their regulatory burden.
324. In light of the above, the Commission finds that the current definitions of broadcast week (seven consecutive broadcast days, beginning on Sunday; with the broadcast day beginning at 6:00 a.m. and ending at midnight) and peak listening period (6:00 a.m. to 6:00 p.m., Monday to Friday) remain the most appropriate for the application of both Canadian and FVM content quotas.

Policy on emerging artists

325. In Broadcasting Regulatory Policy 2011-316, the Commission adopted two separate definitions of emerging Canadian artists.
326. An emerging artist in the English-language market is:
- a Canadian (that is, meets the “A” criterion of the MAPL system) who has never previously made the Top 40 on the following music charts:
 - i. RPM 100 Singles until 3 September 1988;
 - ii. RPM Retail Singles from 10 September 1988 to 10 February 1990;
 - iii. Record Retail Singles until 1 April 1996;
 - iv. Canadian Music Network National Airplay;
 - v. Billboard Hot 100 Singles; or

- vi. The Billboard Canadian Hot 100.
- or the top 25 of the following music charts:
 - i. The Record Country;
 - ii. RPM 100 Country Tracks;
 - iii. Canadian Music Network Country Top 50 Audience;
 - iv. Billboard Hot Country; or
 - v. The Nielsen BDS Country Spins.

327. In addition, an artist in the English-language market would retain the status of “emerging Canadian artist” for a period of 36 months from the date one of its tracks reaches the positions on the music charts mentioned above. If an artist is a member of a duo, trio or group with a new identity, this solo artist or new duo, trio or group will be considered a new artist for 36 months following the date their selection under the new identity reaches one of the positions on the music charts mentioned above.

328. In the French-language market, a Canadian French-language artist shall be considered an emerging artist until one of the following thresholds has been reached:

- a period of six months has elapsed since one of the artist’s albums has reached Gold Record status according to SoundScan;¹⁰ or
- a period of 48 months has elapsed since the release of the artist’s first commercially marketed album.

329. For the purpose of this definition, the concept of “artist” includes duos, trios or groups of artists operating under a defined identity. If a member of a duo, trio or group begins a solo career or creates with other partners a new duo, trio or group with a new identity, the solo artists or duo, trio or group shall be considered an “emerging artist” according to the above criteria.

330. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on support for emerging Canadian artists, their discoverability, and the current definitions.

¹⁰ CD or digital recordings receive gold certification with sales of 40,000 units.

Definitions of an emerging artist

Position of parties

331. In their interventions, the OAB and the CAB proposed that an artist be considered “emerging” when a period of five years or less has elapsed since the release of the artist’s first commercially marketed musical selection.
332. The Associations expressed the view that the definitions of emerging artists are still appropriate, and they supported maintaining an emerging artist’s status for 36 months.
333. Leclerc and the Regroupement both proposed to eliminate the criterion of album sales and proposed a simplified definition that would apply to all Canadian artists, whether they are Francophone, Anglophone or Indigenous.
334. Some interveners were in support of extending the period during which an artist is considered emerging to 60 months following their first airplay on commercial radio.
335. In its intervention, Sirius stated that the current definitions are no longer appropriate and proposed the following definitions:
- A French-language emerging Canadian artist is an artist who has never achieved Gold record sales according to SoundScan. The artist would retain the status of French-language emerging artist for a period of 48 months from the date the artist makes the Top 200 on the SoundScan chart, and after the artist has twice ranked in the Top 10 on the PalmarèsADISQ on digital exposure.
 - An English-language emerging Canadian artist is an artist who has not yet achieved Gold record sales according to SoundScan or has not made the Nielsen Canada Top 200 Billboard Album Chart or the Top 20 on the Nielsen Emerging Chart. The artist would retain the status of English-language emerging Canadian artist for a period of 48 months from the date on which the artist makes one of the above-mentioned charts.

336. Many parties suggested incentives for broadcasting selections from emerging artists that would reduce radio stations’ Canadian content or FVM quotas.
337. For its part, the Associations indicated that a case-by-case approach is more appropriate than imposing a quota, so that particular circumstances of broadcasters could be considered, and so that a commitment would be required when new licences or renewals are awarded or when transactions take place.
338. In its intervention, Music Canada proposed that at least 10% of the musical selections in each broadcast week should be by emerging Canadian artists.

Commission’s analysis

339. With the current definitions, it can be difficult for broadcasters to determine whether an artist is emerging or not, as various sources must be checked to ascertain whether they meet or remain within the definitions. In many cases, that verification must be

done manually, which requires a significant investment of time and money on the part of the broadcasters. However, since most commercial radio stations have no obligation to broadcast music by emerging artists, that requirement is currently limited to the few stations that have a condition of licence to that effect.

340. Currently, many artists release singles before they even create an album, especially on streaming platforms. Accordingly, the definition of an emerging artist could be based on other data for determining the beginning of the “emerging” period, such as the release of the first single under the artist’s name, the ISNI or ISRC code, or the recording date of the musical selection. Furthermore, keeping “emerging” status for a longer period may allow an artist to develop their musical repertoire and become known to the public.
341. While the Commission is of the view that these changes to the definitions of emerging artists would be beneficial to all, it considers that they should be tested before being implemented. As such, the Commission considers that it should wait until the database is fully implemented before testing and imposing possible definitions.
342. Accordingly, the Commission will retain the current definition of emerging artists for the few stations with an associated condition of licence.
343. In regard to the suggestion that the broadcast of each musical selection by an emerging Canadian artist could be used to adjust the Canadian content or FVM quotas, the Commission is of the view that this approach would mix two concepts that should remain distinct.
344. The introduction of a new quota specifically for emerging artists was also proposed. At the same time, results of the public opinion research conducted as part of Phase 1 of the present proceeding show that survey respondents want to hear a greater variety of musical content, as they feel there is currently some repetition. However, there is no evidence on the public record to provide an accurate picture of the situation for Canada as a whole. This may change with the implementation of the database. Because of this, the Commission considers that it should wait for its digital monitoring system to be fully implemented before determining if introducing strict regulation is warranted, and if so, what the acceptable levels might be.
345. Notwithstanding its findings above, given the importance of broadcasting musical selections from emerging artists both to ensure their discoverability and to sustain a vibrant Canadian musical industry, and to provide listeners with the variety they seek, the Commission considers that it must encourage the broadcast of emerging artists’ music on commercial radio stations, and that it must gather more information on the situation facing these artists as soon as possible.
346. Therefore, in order to convey the importance of emerging artists and ensure more varied musical content on commercial radio to better meet listeners’ expectations, the Commission expects commercial radio stations that are not already required by

condition of licence to broadcast music by emerging artists to devote, in each broadcast week, at least 5% of their musical selections to selections broadcast in their entirety from Canadian emerging artists who conform to the following simplified definition:

A Canadian artist shall be considered an emerging artist until a period of 48 months has elapsed since the release of the artist's first commercially marketed song.

For the purpose of this definition, the concept of artist includes duos, trios or groups of artists operating under a defined identity. If a member of a duo, trio or group begins a solo career or creates with other partners a new duo, trio or group with a new identity, the solo artist or duo, trio or group shall be considered an "emerging artist" according to the above criteria.

347. Furthermore, the Commission expects commercial radio licensees subject to this new expectation to report annually on how they have met the expectation set out above, including the percentage of selections from Canadian emerging artists and the number of distinct artists whose music they have broadcast. Commercial radio licensees should also be able to provide, upon request, information such as a list of all titles, artists, and ISRC numbers.

348. In assessing licensee's performance in meeting this expectation, the Commission will take into account each licensee's circumstances, in particular whether the station's format is more or less conducive to the inclusion of selections from emerging artists.

Hits policy in bilingual markets

349. To protect French-language radio stations in bilingual markets, English-language commercial FM radio stations in Ottawa-Gatineau and Montréal are subject to a standard condition of licence, set out in the appendix to Broadcasting Regulatory Policy 2009-62, requiring that less than 50% of all musical selections aired during each broadcast week be hits.

350. A "hit" is defined in one of two ways, depending on the market served by a station:

- in the English-language markets, 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; and
- in the bilingual markets of Montréal and Ottawa-Gatineau, 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.

Position of parties

351. Some parties were in support of eliminating the hits policy, arguing that the policy is antiquated and no longer relevant, as it is not achieving its intended goals.

352. Rogers stated that throughout the history of the policy, little evidence has demonstrated a correlation between the restriction of hits on English-language radio stations in bilingual markets and the protection of French-language station tuning.
353. Rogers, Corus Entertainment Inc. (Corus) and Stingray stated that English-language operators face considerable challenges in a broadcasting environment where global streaming services have unlimited offerings. Stingray emphasized that the problem with the hits policy is not how it impacts competition between French-language and English-language radio broadcasters, but rather that it encourages listeners to look beyond commercial radio to streaming services.
354. For its part, Corus pointed to the operational challenges it faces with respect to the monitoring of hits, as the charts must be constantly monitored to ascertain whether songs previously categorized as non-hits have become hits.
355. Alternatively, some parties indicated that the Commission should maintain the hits policy, noting that the audience transfer from French- to English-language radio stations remains consistent and statistically evidenced, and that the loss of Francophone audiences in French-language radio is not alleviated by a gain in Anglophone audiences.
356. In its intervention, Leclerc supported strengthening the hits policy and proposed that the Commission apply the policy not only during the broadcast week, but also during the peak time period.
357. ADISQ noted that the original purpose of the hits policy was to promote linguistic duality by minimizing competition by English-language radio stations to French-language radio stations. It argued that the data provided by the Commission pertaining to tuning share in each market does not show clear trends.

Commission's analysis

358. The original purpose of the hits policy was to protect Oldies AM radio stations from direct competition with English-language FM radio stations. In Broadcasting Regulatory Policy 2009-61, the Commission's decision to release all English-language FM radio stations (except those broadcasting in Ottawa-Gatineau and Montréal) from the restriction on playing hits was premised on financial evidence that demonstrated the policy did not achieve its intended effect.
359. In that policy, the Commission also proposed that the protection of French-language broadcasters and linguistic duality could serve as justifications for maintenance of the restrictions on the broadcast of hits by English-language commercial FM radio stations in bilingual markets.
360. In regard to the current data, English- and French-language commercial radio stations have been experiencing a decline in revenues at a national level. As set out in Broadcasting Notice of Consultation 2020-374, total tuning by Francophones to French-language radio stations fell 7.5% between 2017 and 2019, while the tuning share of English-language radio stations fell by 18.4%. In Montréal, during the same period, total tuning by Francophones to French-language radio stations decreased by

2.6%, while total tuning by Francophones to English-language radio stations dropped dramatically by 38%. Within the Ottawa-Gatineau market, tuning habits demonstrate a substantial difference between Anglophone and Francophone listenership.

361. Policies are generally developed to address a perceived market inequity or to solve an issue. The stated intent of the hits policy is to address an assumed competitive imbalance between English- and French-language radio stations in the Ottawa-Gatineau and Montréal markets. However, in the Commission's view, previous and current data on tuning share and revenues in these bilingual markets is not compelling enough to substantiate continued application of the hits policy.
362. A rigid policy mechanism such as the hits policy may have conferred some benefit to French-language broadcasters in a closed market where all entities were regulated and enjoyed exclusive ability to reach the ears of Canadians. However, in a partly open market where unregulated online platforms with personalized content and enormous catalogues are accessible to Canadians on demand, the hits policy has the effect of weakening the position of English-language commercial radio broadcasters without necessarily conferring protection to French-language radio stations.
363. The Commission is also of the view that the policy instruments it employs today must reflect flexibility and adaptability, rather than prescription and rigidity, particularly in a partly open market system in which players with the greatest technological capabilities are unregulated.
364. Therefore, the Commission finds that the evolution of the audio market in Canada has made it such that the hits policy is no longer effective in achieving its stated intent of protecting French-language broadcasters from a loss of revenues or audience share.
365. In light of the above, the Commission removes the application of the hits policy from the bilingual markets of Ottawa-Gatineau and Montréal. Broadcasting Regulatory Policy 2022-334, also published today, which outlines the change noted above to the standard conditions of licence for commercial AM and FM radio stations, replaces Broadcasting Regulatory Policy 2009-62.
366. The Commission notes that campus radio stations are also subject to restrictions on the broadcast of hits (10% of all selections or 30% in the case of certain campus instructional stations). As the present proceeding is dedicated to commercial radio stations, it is not appropriate to make changes to the campus radio stations' obligations. Accordingly, the Commission intends to initiate a proceeding to seek comments on the hits policy in the context of campus radio stations. In the meantime, the Commission will keep the current definition of hits and the charts used to determine them.

Montages

367. The Regulations define a montage as “a compilation of one minute or more in duration containing excerpts from several musical selections but does not include a medley.”¹¹ Furthermore, the various musical excerpts in a montage are edited and assembled by persons other than the artists or musicians.
368. Pursuant to subsections 2.2(11) and 2.2(12) of the Regulations, a montage is deemed to be a Canadian musical selection or a French-language musical selection, or both, if the total duration of the Canadian or French-language musical selection is greater than 50% of the total duration of the montage and the total duration of the montage is four minutes or more.
369. Presently, montages are almost exclusively composed of an assortment of edited excerpts from non-Canadian, English-language musical selections.
370. Given that montages are counted as single musical selections under the Regulations regardless of how many excerpts they contain, broadcasting English-language montages in the programming of certain French-language commercial radio stations can result in reaching the required FVM regulatory percentages while considerably reducing the broadcast of FVM musical selections.
371. For English-language radio stations, montages can have a similar effect on the broadcast of Canadian content, as they can also be used to broadcast more foreign content or hits in bilingual markets where their airtime is regulated.
372. In order to better manage the broadcast of montages and to ensure that broadcasters respect the objectives of regulations regarding FVM and Canadian content, the Commission published Broadcasting Information Bulletin 2011-728, which clarified that any broadcaster that would devote more than 10% of its programming over the broadcast week to montages would appear to have failed to meet the objectives of the regulatory framework and the intent of the policy on montages, and could have specific measures or any other measures imposed.
373. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on the appropriateness of counting the montage excerpts individually for French-language radio stations rather than considering a montage as a single musical selection.

Position of parties

374. Overall, members of the music industry agreed that montages should be eliminated, whereas a majority of broadcasters wished to maintain current rules.

¹¹ A medley is similar to a montage, but the artists or musicians combine excerpts from several musical selections within a single performance. Unlike montages, medleys are rarely used.

375. In its intervention, the MCC asked the Commission to eliminate ways for broadcasters to skirt FVM quotas, including montages.
376. For its part, ADISQ proposed that in montages of English-language musical selections, every English-language excerpt over one minute in length should count as one selection. It proposed maintaining the current rule for French-language montages.
377. The Associations supported the Commission's proposal to count montages excerpts individually for French-language radio stations.
378. The Regroupement stated that the current rules should be maintained, but added that if the Commission decides to count each song excerpt in a montage individually, it should reduce the FVM quota. These interveners explained that montages allow them to retain their audience and balance the time spent broadcasting English- and French-language vocal music in certain time slots at levels that better suit listeners' music consumption habits and expectations.

Commission's analysis

379. The Commission considers that the notion of "balancing" the time spent broadcasting FVM that the Regroupement raised in its intervention appears to be an admission to using montages as a way for radio broadcasters to bypass the regulatory requirements for FVM rather than an artistic element or tool for discovery.
380. The widespread broadcast of montages containing excerpts from English-language (and predominantly non-Canadian) musical selections has the effect of creating a gap between the place French-language music actually occupies and the required regulatory levels.
381. Although the practice is a testament to the perceived interest for English-language music that broadcasters give to their listeners and their willingness to meet that interest while appearing to abide by their obligations, the outcome is that broadcasting quotas are effectively circumvented.
382. Furthermore, very few individual interveners stated that they wanted more English-language music to be broadcast, and instead highlighted the opposite. As noted above, the information on the public record does not lead to the conclusion that bypassing the established quotas is more aligned with listeners' interests.
383. It is rare for a station to exceed the 10% limit of montages; in order to do so, it would have to broadcast more than 12.6 hours of montages in a broadcast week. In the Commission's view, montages can harm the presence of FVM and Canadian content, regardless of whether the radio stations are in compliance with requirements related to the broadcast of montages.
384. Furthermore, calculating each excerpt in a montage on an individual basis instead of considering it a single musical selection would resolve certain issues caused by the current regulations. It would also alleviate the need for the Commission to manage

certain semantic aspects related to the definition of montages, which interveners identified as challenging.

385. In Public Notice 1998-132, the Commission emphasized that a montage consists of excerpts that are tightly woven and tied together by unifying elements such as a common rhythm or theme. As such, several unrelated musical excerpts played back-to-back would not be considered to be a montage. The Commission also indicated that in cases where it is not clear whether the programming is a montage or a series of shortened selections, the Commission would not consider the programming as a single musical selection, but rather as a series of shortened selections.
386. Nonetheless, counting excerpts in a montage on an individual basis introduces other risks. For instance, radio broadcasters would have the ability to simply assemble and broadcast several excerpts of English-language musical selections of 59 seconds or less in their montages, or they could include interruptions to the broadcast to avoid having to count them as a selection given that, under the current definition, an excerpt must be one minute or longer without any interruptions in order to count as a selection. Therefore, the Commission considers that the notion of duration of montages excerpts should also be removed.
387. In light of the above, the Commission intends to launch a proceeding seeking comments on proposed amendments to the Regulations that would remove the notion of duration of montage excerpts, and would remove montage from the definition of a musical selection.
388. The Commission notes that, in Broadcasting Notice of Consultation 2020-374, the section on montages only mentioned their use by French-language commercial radio stations. Given that the issue is more prevalent in that market and that it was raised in the 2015 FVM proceeding, it was not specifically extended to the English-language market, even though some radio stations may use montages to bypass regulations on Canadian content and hits. However, the above-noted changes will have a potential impact on the English-language market as well. As such, as part of the above-noted future proceeding, the Commission intends to seek comments on any particular impacts that the changes regarding montages for the French-language market may have on the English-language market.

Local programming

389. In the 2006 Commercial Radio Policy, the Commission defined local programming as follows:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station. Licensees must incorporate spoken

word material of direct and particular relevance to the community served in their local programming, which must include local news, weather, sports coverage, and the promotion of local events and activities.

390. In general, only commercial FM radio stations that do not serve a single-station market are subject to a standard condition of licence, set out in the appendix to Broadcasting Regulatory Policy 2009-62, requiring that at least one-third of programming (42 hours) in the broadcast week be devoted to local programming, which can include both spoken word and musical content, in order for them to solicit or accept local advertising.
391. While local news must be included as part of local programming, no specific minimum broadcasting requirement for local news was established as part of this condition of licence.
392. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on the quality and diversity of local programming and local news, and whether their current requirement is appropriate.

Definition of local programming

Position of parties

393. The SCFP proposed updating the definition of local programming to specify that such programming is produced by the radio station's staff within the station's broadcast area.
394. However, the Regroupement submitted that it is primordial to maintain the notion that content production "originates with" or "for" the station to allow all the flexibility required by broadcasters.

Commission's analysis

395. Updating the definition of local programming to specify that it is produced by the station's staff within the station's broadcast area could have a significant impact on many broadcasters' business models. The Commission is of the view that making this change would remove significant flexibility from the policy and could hinder broadcasters' ability to remain competitive.
396. Although local programming does not currently have to be produced within the coverage area of the station, it has to be produced "for" the station, which ensures that it caters to the needs of the particular area where it will be broadcast. This policy strikes a compromise between broadcasters' ability to streamline their operations and listeners' ability to have their particular circumstances reflected on air.
397. In light of the above, the Commission considers that the definition of local programming should not be modified at this time.

Condition of licence linking local programming and local advertising

Position of parties

398. Most broadcasters noted that the condition of licence linking local programming and local advertising is still relevant and appropriate.
399. In its intervention, the CAB indicated that the current policy creates a strong financial incentive to provide local programming given that on average, local advertising represents 70% of radio revenues.
400. The Associations stated that they appreciate the protection the condition of licence provides campus and community radio stations, and would like the threshold to be higher, or for there to be a requirement that commercial radio stations also commit to a certain amount of local news.

Commission's analysis

401. For the majority of interveners, the standard condition of licence linking the possibility of soliciting or accepting local advertising to the broadcasting of local programming is an example of an efficient and flexible policy. As the majority of commercial radio stations' revenues still come from local advertising, the incentive to create local programming remains strong.
402. In regard to the Associations' proposal that commercial radio stations also be required to commit to a certain amount of local news, the Commission notes that the definition of local programming already indicates that the licensee must include local news, which includes the recounting and reporting of events of the day or recent days as well as background material about current events when included in newscasts, but excludes weather, traffic and sports and entertainment reports. Accordingly, the Commission considers that the condition of licence is still relevant and does not require any amendments at this time.

Local news and airtime requirements

Position of parties

403. The FRPC proposed that the Regulations be amended to require all commercial radio stations to provide specific levels of original local, regional and national news to the communities they serve.
404. Perth FM stated that there must be an ongoing commitment to provide ample local news in the communities served and that local news airtime and locally-based staffing must be regulated.
405. For its part, the CAB stated that the current regulation allows private radio stations to maximize the level of news and information appropriate to their market, format and demographic consistent with their financial resources, making standard minimum levels of local news unnecessary, inappropriate or ineffective. Moreover, the CAB noted that the Commission's definition of local news should be more in line with that for television, which includes sports, weather and entertainment.

406. Many other broadcasters stated that regulation is not needed in this regard. Specifically, Stingray stated that there are different types of stations and that news often does not take the form of a traditional newscast, but is seamlessly integrated into the programming and designed to both inform and entertain. The Regroupement also indicated that news is not only delivered in formatted newscasts, but also heard throughout spoken word content, and would be difficult to quantify.
407. Friends stated that if broadcasters generally want to provide local programming but face financial constraints, it is not clear how new regulatory obligations can help without a complementary funding mechanism.
408. The OAB proposed that the Commission use an approach similar to the [Local Journalism Initiative](#) from the Department of Canadian Heritage, where financial incentives would assist stations with the resources needed to generate local content.
409. Many interveners expressed the view that audiences have access to varied local programming reflecting different viewpoints. Some broadcasters submitted that local programming, although costly, is essential to the future success of commercial radio, and noted that the broadcast of this type of programming increased during the pandemic despite falling revenues. The importance of local news and information provided on radio, as a differentiator to online services, was outlined many times.

Commission's analysis

410. Although commercial radio stations must include local news in their local programming to be able to solicit local advertising, very few licensees currently have specific obligations towards the broadcast of local news.
411. There is no evidence on the public record of a flagrant lack of local news available on commercial radio stations that would require the introduction of more stringent regulation to increase this type of content. Consequently, the Commission does not see a reason to introduce mandatory quota requirements for local news at this time.
412. In regard to the proposition that the definition of local news be amended, the Commission considers that although some information can be transmitted through banter and integrated into the general spoken word programming, a distinction must be made between “news,” such as what is presented in news bulletins, and opinions.
413. In regard to the suggestion to align the definition of news on radio with that for television, which includes sports, weather and entertainment reports, the Commission notes that the nature of the mediums are quite different. Television news programming has much more of a prescribed format and its elements are usually part and parcel of news programs that are presented at specific predetermined moments during the broadcasting day. On radio, news is often introduced regularly during programs heard throughout the broadcast day for the benefit of listeners joining in, without necessarily being part of a news bulletin or a regularly scheduled newscast. Thus, to include sports, weather and entertainment in the definition of news for radio could not only be difficult to monitor, but could also result in the reduction of the amount of “pure” news offered by radio stations.

414. As for the allocation of additional funding for local news, the Commission considers that with the variation in broadcasters' revenues as a result of the pandemic and possible forthcoming amendments to the Act, it would be difficult to properly assess needs and funds available. The Commission also notes that Bill C-18, An Act respecting online communications platforms that make news content available to persons in Canada, may also influence the landscape of news production and funding if it is passed. In its current form, the Commission is being asked to take on responsibility for administering Bill C-18, which would also give it an opportunity to consider issues surrounding the funding of local news on audio services more holistically.
415. Accordingly, the Commission finds that it will be in a better position to evaluate the situation in the future.
416. The Commission will continue to monitor the situation, both through content monitoring and any regulatory changes resulting from the potential new legislative review, and will address any concerns on a case-by-case basis.

Indigenous music and artists

417. Pursuant to subparagraph 3(1)(d)(iii) of the Act, the broadcasting system should, through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Indigenous Peoples within that society.
418. Paragraph 3(1)(o) of the Act also sets out that programming that reflects the Indigenous cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose.
419. In Broadcasting Notice of Proceeding 2019-217, the Commission launched a proceeding to co-develop with Indigenous Peoples a new framework for Indigenous broadcasting. This proceeding is still ongoing. While the first phase of this policy review has been completed, the subsequent phase was delayed due to the COVID-19 pandemic.
420. In Broadcasting Notice of Consultation 2020-374, the Commission sought comments on specific obstacles to the success of Indigenous music and artists related to the current commercial radio policy while indicating that the co-development of a new Indigenous Broadcasting Policy would allow issues to be addressed in depth.

Position of parties

421. In its intervention, the IMA emphasized that Indigenous Peoples are a sovereignty-affirming group and are accordingly entitled to targeted supports and policies equal to those of English and French Canada. It stated that it is imperative to have Indigenous

artists featured alongside Canadian and international stars on commercial radio stations.

422. The IMA further highlighted the importance of radio to Indigenous communities, given the overall lack of access or affordability of the Internet and/or data plans needed to stream music.
423. The IMA recommended that commercial FM radio stations be required to include Indigenous music as part of their Canadian content every broadcast day, with a quota phased from 3% to 5% over four years. It also recommended that the Commission consider greater investments for Indigenous broadcasters given that they play a significant role in the development and incubation of Indigenous talent.
424. Most parties also shared the view that more support towards Indigenous music was needed. Different recommendations as to how this could be achieved were made, including airplay requirements and expectations for Indigenous artists on commercial radio.
425. FPR requested that deficiencies in radio audience measurement systems be addressed and that radio frequencies be set aside in congested urban markets that do not currently have an Indigenous radio service.
426. The CAB stated that licensing of ethnic and Indigenous radio stations was the way chosen by the Commission to promote airplay of music in languages other than English or French. While acknowledging that incentives to encourage greater airplay of Indigenous music on mainstream radio may be appropriate, the CAB considered that there are no barriers to the success of Indigenous artists on commercial radio other than those faced by unestablished artists.
427. According to the CAB, helping Indigenous artists and those from diverse communities to find success at home and abroad would be best achieved by redirecting funding from existing resources, such as FACTOR and Musicaction or the Radio Starmaker Fund.
428. In its intervention, Pattison Media Ltd. highlighted mentoring initiatives that it has implemented to help with the recruitment of Indigenous personnel. For its part, Starboard stated that the main barrier to the Indigenous music industry was its lagging in terms of its development.
429. In their interventions, the Associations noted the need to enhance the traceability of Indigenous artists, such as through the development of a database.

Commission's analysis

430. There are currently no obligations for commercial radio broadcasters to specifically report on initiatives undertaken to support Indigenous Peoples. Accordingly, the Commission does not have accurate information on music by Indigenous artists

broadcast on commercial radio stations or on Indigenous Peoples' participation in commercial radio broadcasting.

431. However, observations from internal radio monitoring tend to indicate that there are currently very few musical works by Indigenous artists broadcast on commercial radio and that those Indigenous artists whose music does receive airplay tend to be a recurring and small number of established artists.
432. The Commission notes that CCD recipient funding organizations who receive mandatory contributions have started implementing initiatives in recent years to encourage greater applications by, and eligibility of, Indigenous artists and artists from equity-deserving communities. However, funding programs designed specifically by and for Indigenous music artists remain elusive, and information on the total allocation of funds in support of Indigenous music artists and/or events is scarce.
433. The Commission considers that the fact that many interveners recommended measures to increase the airplay of Indigenous music is an indication of a general consensus on their part of the insufficient presence of this type of content on commercial radio.
434. In Broadcasting Decision 2017-198, the Commission recognized the broadcasting system's important role in the reconciliation between Indigenous and non-Indigenous Peoples in Canada. The Commission also reminded all radio and television broadcasters, both Indigenous and non-Indigenous, of their role in ensuring that the programming broadcast on their respective stations reflects Indigenous cultural diversity. Moreover, the Commission indicated that it would closely monitor the ability of the broadcasting system as a whole to fulfill the mandate of promoting and serving Indigenous communities.
435. The Commission considers that it has a key role to play in helping to address Indigenous broadcasters and content creators' views of long-standing inequities in the broadcasting system, particularly with regards to the airplay and funding of Indigenous music and artists.

Airplay

436. Considering that commercial radio broadcasters currently include very few works by Indigenous artists within their Canadian musical selections, the Commission is concerned that incentives may not result in a significant increase in the exposure of Indigenous artists and their music.
437. On the other hand, if the Commission were to impose prescriptive measures such as airplay requirements for "Indigenous music", it would need to ensure that an agreed-upon definition is provided, and that tools to measure compliance are available. In this regard, the Commission notes the IMA's statement that it is critical for the Indigenous music industry to hold the responsibility for defining what is Indigenous.

438. The Commission considers that the determination and scope of questions related in any way to Indigenous broadcasting should stem from a meaningful co-development process with Indigenous Peoples. The definitions needed to impose airplay requirements, and determinations about how to access and use Indigenous content, should come out of this co-development process.
439. In light of the above, the Commission considers that it should encourage increased support for, and presence of Indigenous content and voices within mainstream radio broadcasting, in addition to gathering more information on the matter.
440. As such, the Commission expects commercial radio broadcasters to include Indigenous music in their playlists based on the provisional definition of Indigenous-created music set out below, and encourages them to report annually, if it is practical to do so, on the amount of Indigenous content aired throughout the broadcast year (i.e., 1 September to 31 August), including the percentage of Indigenous musical selections out of the total musical selections that were aired, and the number of distinct artists whose music has been aired. It should be noted that this issue will be revisited once the Commission completes co-development of a new Indigenous Broadcasting Policy, and that additional requirements may be set out at that time.
441. In the meantime, the wording provided in Broadcasting Decision 2017-198 could provide guidelines for commercial broadcasters to determine whether a musical selection can be considered as one that is created by an Indigenous person:

“Indigenous-Canadian musical selection” is defined as a musical selection written or performed by an individual who has Canadian citizenship and who self-identifies as Indigenous, which includes First Nations, Métis or Inuit.

Funding

442. The Commission notes that although funding organizations that are mandatory recipients of CCD contributions do provide support for Indigenous music artists, there are currently no set requirements for commercial radio broadcasters to specifically support the development of Indigenous musical or spoken word content. Contributions provided to Indigenous radio stations to produce programming content are, however, considered eligible discretionary initiatives.
443. In regard to the CAB’s proposal that funds be re-directed within FACTOR and Musicaction to support Indigenous artists, the Commission notes that it does not have the authority to dictate how CCD contributions paid to these third-party independent funding organizations should be allocated.
444. The Commission considers that commercial radio broadcasters should do more to financially support the development and/or promotion of Indigenous content. However, the Commission finds that it lacks important information to implement achievable, quantifiable and meaningful measures to that end.

445. In light of the above, the Commission will gather further information on different funds and initiatives that help support, promote and ensure the sustainability of the Indigenous broadcasting content sector, not only through the proceeding to co-develop a new Indigenous Broadcasting Policy, but also through the above-noted follow-up proceeding to explore the CCD contribution system.

Diversity

446. In Broadcasting Public Notice 2007-122, the Commission set out an expectation that all commercial radio licensees adopt a set of best practices related to diversity to incorporate and reflect in their programming the reality of Canada's ethnocultural minorities, Indigenous Peoples, and persons with disabilities. The Commission also imposed certain reporting requirements to that effect on commercial radio operators.

447. As a condition of licence, all commercial radio broadcasters are required to adhere to the CAB's Equitable Portrayal Code, as adopted by the Commission in Broadcasting Public Notice 2007-122. However, this condition of licence is suspended for members in good standing of the Canadian Broadcast Standards Council.

Position of parties

448. In its intervention, Advance requested that the Commission uphold mandates to:

- build a Canadian broadcasting system that reflects the diverse cultural and racial identity of the country;
- encourage and increase BIPOC ownership and management throughout the Canadian broadcasting industry, through advocacy and legislation; and
- otherwise encourage opportunities for and representation of Canada's BIPOC communities at all levels of the Canadian broadcasting industry, and in commercial radio in particular.

449. Advance's proposal was supported by the Alliance for Equity in the Music Industry (Alliance), CIMA and the Associations.

450. As noted above, some interveners recommended the allocation of CCD contributions towards a fund to support the development of female, Indigenous and racialized artists.

451. For its part, Musique Bleue proposed that the Commission impose a 50% quota for female Francophone artists.

452. The Alliance stated that the Commission should create an Equity Office with a mandate to apply the government's equity and inclusion objectives to the distribution and benefit of CCD contributions, along with periodical review of mandatory and discretionary CCD contributions through an equity and inclusion lens. It further stated that music industry stakeholders should have accountability measures that ensure the inclusion of racialized communities as part of their internal governance and operations.

453. The Alliance also proposed that the Commission institute mandatory gender- and race-based data collection by the broadcasters, including identification of BIPOC-created music identified as Canadian content on commercial radio playlists, and in the ownership, staffing and community makeups of those eligible initiatives benefiting from CCD contributions.

Commission's analysis

Diversity in ownership

454. To date, the Commission has considered diversity in ownership to refer to the number of ownership groups within a given commercial radio market and established limits in its DOV Policy, set out in Broadcasting Public Notice 2008-4.
455. In regard to Advance's proposal that the Commission create and uphold mandates related to diversity in the Canadian broadcasting system, the Commission considers that it is already required to further these objectives under the Act.
456. Specifically, the Commission notes that it typically issues calls for applications to ensure that licences are awarded to proposals that best serve the public interest when considering licensing a new commercial radio station or reviewing a proposed ownership transaction.
457. While the DOV Policy aims to increase diversity in broadcasting, the Commission notes that the policy also seeks to increase diversity of programming and content by ensuring that no single entity can gain control over too large a portion of the radio broadcasting industry. However, it did not, at that time, introduce any specific requirements regarding ethnic or cultural representation in ownership.
458. In light of the above, the Commission considers that this issue requires more investigation and could be pursued further as part of a future review of the DOV Policy. This would allow the Commission to consider the issue through a more holistic approach by examining all broadcasting undertakings, not just commercial radio broadcasters.

Programming and contributions

459. The Commission notes that the imposition of any broadcast quotas, whether for female, racialized or any other specific group of artists, would require both clear definitions and the availability of data relating to those groups to apply it.
460. The Commission considers that establishing such definitions and collecting information that applies to them would be onerous and impractical, as no such information is included with current metadata of musical selections, which means that the information would have to be added manually by either artists or broadcasters for every single selection.

461. Further, the Commission considers that ensuring the development of Canadian female talent, as well as developing talent from equity-deserving communities, should be the first and fundamental step and could be explored through CCD contributions.
462. Similarly, the Commission considers that more equity and inclusion could be better achieved by amending the CCD contributions regime to ensure that a portion of expenditures is directed to equity-deserving communities rather than by creating an equity office.
463. In light of the above, and as noted previously in the present policy, the Commission intends to launch a follow-up proceeding to explore the CCD contribution system, which will provide it with an opportunity to seek comments on the possibility of requiring or encouraging all stations to direct a portion of their contributions to eligible initiatives that support diversity or, should a new fund to support diversity be created, whether a portion of contributions should be directed to it.
464. As noted above, some mandatory funds are taking strides to ensure that a portion of the contributions are allocated to initiatives supporting diversity. As part of the above-noted proceeding on the CCD contribution system, the Commission intends to gather more information from FACTOR, Musicaction, Radio Starmaker Fund, Fonds RadioStar and the CRFC regarding their current initiatives that support diversity in audio content creation (both music and spoken word) and regarding the portion of their funding that is directed towards supporting those initiatives. This will allow the Commission to get a sense of what portion of the CCD funding is currently being allocated to diversity initiatives and which underrepresented communities are being supported by these funds.

Data collection and engagement

465. In regard to Alliance's proposed mandatory gender- and race-based data collection by the broadcasters, the Commission notes that this information may not be readily available to broadcasters.
466. Further, there are intersectionality¹² considerations with respect to the collection of these data, which adds a level of complexity when trying to assess these data. However, the Commission notes that FACTOR states on its website that it currently collects this data, and as a result, the Commission considers that it may be available and possible to collect.
467. The Commission is of the view that the onus would be on the music and broadcasting industries to develop best and appropriate practices in regard to the confidentiality of such data.

¹² Intersectionality is the interconnected nature of social categorization such as race, class and gender as they apply to a given individual or group, regarded as creating overlapping and interdependent systems of discrimination or disadvantage.

468. In regard to Alliance's proposal that the Commission expressly include and consider perspectives of BIPOC in the music industry, the Commission notes that its processes are open to anyone to share their views and that it welcomes and encourages views from all perspectives.
469. Furthermore, the Commission is working towards enhancing its engagement activities to raise awareness of the Commission's role and public consultation processes among Canadians, and especially among organizations reflecting equity-deserving communities.
470. The Commission considers that this is an important topic and notes that it will be considering it more holistically than only through its Commercial Radio Policy.
471. In light of the above, as part of the above-noted proceeding on the CCD contribution system, the Commission intends to seek comments on the proposal for broadcasters to collect gender- and race-based data, as well as data about Indigenous Peoples, persons with disabilities and people who identify as 2SLGBTQI+ from the eligible initiatives benefiting from CCD contributions.

HD Radio

472. HD Radio is the trademark name for a proprietary digital radio technology in North America that is based on a hybrid method of transmitting both analog and digital radio signals known as NRSC-5 In-band/on-channel Digital Radio Broadcasting Standard. HD Radio was developed by iBiquity and is now owned by Xperi.
473. HD Radio technology allows a station to simulcast its analog signal on its first adjacent digital sub-channel and up to three additional digital sub-channels, without impacting spectrum availability. It also offers improved sound quality and can be used to broadcast digital on-screen information such as images, ads, song information, and traffic and weather updates.
474. In Broadcasting Regulatory Policy 2014-554, the Commission determined that HD Radio could be implemented on an experimental basis, as it was still in its initial stages of deployment in Canada.
475. Since then, broadcasters have used their digital sidebands to rebroadcast content from their other stations and to offer additional ethnic or specialty programming. There are currently 28 FM HD Radio stations and one AM HD Radio station operating in Canada.
476. The Department of Industry is currently reviewing its BPR-3 – Application Procedures and Rules for FM Broadcasting Undertakings (BPR-3).

Position of parties

477. Although the Commission did not ask questions pertaining to HD Radio as part of the present proceeding, it received interventions with respect to the issue. There were three main themes to these interventions:

- adapting the current regulatory framework to include provisions for voluntary use of HD Radio and removing its experimental status;
- continuing with the status quo of experimental status, and/or waiting until the necessary policy and regulatory changes are fully studied; and
- how HD Radio allows an increase to the diversity of voices with its sub-channels.

Commission's analysis

478. The Commission considers the topic of HD Radio to lie outside the scope of the present proceeding as it would impact all types of licences, not just commercial radio licences.

479. Accordingly, the Commission will not modify its regulation of HD Radio as part of this proceeding. However, it may consider a public consultation process if there is a need for a formal HD Radio regulatory framework once the Department of Industry's consultation process regarding integrating HD Radio into BPR-3 is completed.

Reports and monitoring

480. Pursuant to the Regulations, a licensee shall:

- keep, in a form acceptable to the Commission, a program log or a record of the matter broadcast by the licensee, retain the program log or record for a period of four weeks after the date when the matter was broadcast, and furnish to the Commission on request that program log and record for any day, with a certificate signed by or on behalf of the licensee attesting to the accuracy of its content (paragraph 8(1)(a) and (b), and subsection 8(4));
- retain a clear and intelligible audio 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 of four weeks, for eight weeks from the date of the broadcast (paragraph 8(5)(a) and (b)); and
- on or before 30 November of each year, submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the year ending on the previous 31 August (subsection 9(2)).

481. In Circular No. 404, issued on 23 August 1994, the Commission indicated that:

- subject to below, all licensees of radio programming undertakings, including radio networks, must file audited financial statements at the licensee level for each 12-month period ending 31 August; and
- other than licensees who are public companies, all licensees of radio undertakings who do not have total radio advertising revenues of more than \$10 million for all of their licensed radio undertakings combined may, in lieu of audited financial statements, file non-audited financial statements at the licensee level for each 12-month period ending 31 August.

Position of parties

482. Although the Commission did not ask questions pertaining to reports and monitoring in Broadcasting Notice of Consultation 2020-374, many broadcasters submitted comments on this issue.

483. In its intervention, the OAB recommended that the Commission re-evaluate all reporting requirements and the need to know each piece of information.

484. The OAB also advocated for an increased tolerance for a margin of error for relatively minor administrative matters such as late filing of annual returns, minor shortfalls in CCD contribution payments, or CCD benefits deemed as ineligible.

485. In its intervention, the CAB also stated that a substantive exercise of regulatory streamlining is needed. However, it proposed that the Commission make only a few high-level directional decisions in this proceeding and then form an industry-Commission working group to develop a more specific road map.

486. Leclerc noted that the obligation to file annual audited reports within a short deadline weighs heavily on the shoulders of small broadcasters, particularly when combined with all the forms required by the Commission. It proposed that the filing date for the annual report and financial statements be moved from 30 November to 31 December for small broadcasters.

487. For its part, Torres Group of Companies noted that the forms for annual reports are not intuitive and must be filled in, managed, and filed even if only the financial results have changed from the previous year. It added that annual reporting could easily be achieved with a single form that has a box that simply confirms that all other information is on file.

488. For log and music checks, the OAB proposed that the Commission use technology to self-generate reports by using MRC Data/BDS records of all music played without burdening the radio stations. For its part, the CAB proposed that the Commission consider adopting compliance monitoring based on spot audits. The CAB added that AI-based monitoring systems would permit the Commission to conduct random audits of broadcasters' content broadcast compliance, be they licensed or exempt, traditional or online.

Commission's analysis

489. The Commission notes that each year, it examines the annual returns filing requirements, looking for efficiencies and areas where the reporting can be simplified. As a result of this process, it has removed or simplified reporting requirements and forms in the past.
490. While most data collected by the Commission is essential, it may not always be used by the Commission, but sometimes is required by Statistics Canada, as both organizations have data sharing agreements and conduct a joint survey. As such, the Commission is of the view that there is no need to re-evaluate all reporting requirements as it is an ongoing process.
491. In regard to late filing of annual returns, the Commission notes that it is still an issue, as some broadcasters do this repeatedly. However, a system is currently in place to alert the licensee that the annual return is due. Thus, broadcasters are always made aware of their possible non-compliance.
492. The situation is different in regard to CCD contributions as compliance is far more complicated to assess since the requirements are different for every station and not all stations are required to contribute. The analysis of the information received is required to determine whether there is compliance, not only with the filing date, but also with the amount contributed and details of the actual initiatives funded.
493. The Commission is of the view that this is an issue that could be considered as part of the above-noted follow-up proceeding regarding the CCD contribution system.
494. In regard to Leclerc's proposal to change the submission date of the annual returns, the Commission notes that any delay of this date would delay the time when the data can be made available internally for compliance, reporting and publication purposes.
495. In regard to the forms and all matters of updating systems to make them easier to use, the Commission notes that it is always trying to improve what it can with the tools available to it, while respecting its obligation regarding accessibility and compatibility, and will continue to do so. The Commission considers that all issues relating to logs and records will be greatly reduced once the digital monitoring system is in place.

Conclusion

496. The Commission considers that the measures announced in this policy will alleviate the regulatory burden on broadcasters without impeding the ongoing support of the cultural, social, and economic fabric of Canada and the needs and interests of Canadians. The Commission also considers that the measures are flexible, adaptable and forward-looking, considering current shifts in the technological and regulatory broadcasting environment.

497. As such, the Commission's determinations noted above include added flexibility in the COP, the modification to the identification of Canadian musical selections, and the elimination of the hits policy. Moreover, the upcoming implementation of the digital monitoring system and database, which will ensure predictability and consistency, will be in line with current technology, norms and current/future realities of traditional and online platforms.
498. Other determinations are geared towards supporting creators and Canadians, such as ensuring that Canadian and FVM quotas can no longer be circumvented through montages and initiating a move towards a contribution system that would generate additional funding for CCD and ensure that funding reaches diverse initiatives.
499. The Commission intends to initiate the process to make the amendments to the Regulations reflecting the determinations set out in this regulatory policy.
500. Further, the Commission intends to initiate a follow-up proceeding to seek comments on various proposals and questions regarding the CCD contribution system.
501. Finally, the Commission continues the co-development with Indigenous Peoples of Canada of a new Indigenous broadcasting policy, the outcome of which will influence all broadcasting sectors of Canada.

Secretary General

Related documents

- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2022-333, 7 December 2022
- *Revised conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2022-334, 7 December 2022
- *CKHY-FM and CKHZ-FM Halifax – Acquisition of assets and licence amendments*, Broadcasting Decision CRTC 2021-140, 26 April 2021
- *Call for comments – Commercial radio policy framework review*, Broadcasting Notice of Consultation CRTC 2020-374, 12 November 2020, as amended by Broadcasting Notice of Consultation CRTC 2020-374-1, 11 January 2021
- *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*, Broadcasting Notice of Consultation CRTC 2020-336, 17 September 2020
- *Commercial radio policy framework review*, Broadcasting Notice of Proceeding CRTC 2020-25, 28 January 2020
- *Co-development of a new Indigenous Broadcasting Policy*, Broadcasting Notice of Proceeding CRTC 2019-217, 20 June 2019

- *Licensing of new radio stations to serve the urban Indigenous communities in Vancouver, Edmonton, Calgary, Ottawa and Toronto*, Broadcasting Decision CRTC 2017-198, 14 June 2017
- *Review of the regulatory framework for French-language vocal music applicable to the French-language commercial radio sector*, Broadcasting Notice of Consultation CRTC 2015-318, 20 July 2015, as amended by Broadcasting Notice of Consultations CRTC 2015-318-1, 27 July 2015, 2015-318-2, 21 October 2015, 2015-318-3, 2 November 2015, 2015-318-4, 1 December 2016, and 2015-318-5, 15 December 2016
- *A targeted review of the commercial radio sector*, Broadcasting Regulatory Policy CRTC 2014-554, 28 October 2014
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Requirements for the broadcast of radio montages*, Broadcasting Information Bulletin CRTC 2011-728, 24 November 2011
- *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011
- *New service objectives for the processing of broadcasting and telecommunications applications as of 1 April 2011*, Broadcasting and Telecom Information Bulletin CRTC 2011-222, 1 April 2011
- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010
- *Revised guidelines for the application of the Common Ownership Policy for Radio*, Broadcasting Information Bulletin CRTC 2010-341, 4 June 2010
- *Conditions of licence for commercial AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009
- *Policy regarding the broadcast of hits by English-language FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-61, 11 February 2009
- *A guide to the CRTC application process for change in effective control and certain transfers of shares of broadcasting undertakings as well as for the acquisition of assets of broadcasting undertakings – Information bulletin*, Broadcasting Circular CRTC 2008-8, 21 November 2008, as amended by Broadcasting Information Bulletins CRTC 2008-8-1, 23 December 2010 and 2008-8-2, 6 December 2013
- *Regulatory policy – Diversity of voices*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008

- *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
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *The Commission's policy on local management agreements (LMAs) – Determinations concerning the appropriateness of various existing and proposed LMAs, including local sales agreements, between licensees of radio stations serving the same market*, Broadcasting Public Notice CRTC 2005-10, 31 January 2005
- *Regulations Amending the Radio Regulations, 1986 – Commercial Radio Programming*, Public Notice CRTC 1998-132, 17 December 1998
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998
- *A Review of Certain Matters Concerning Radio*, Public Notice CRTC 1995-60, 21 April 1995
- *Requirements for the Filing of Financial Statements with the Broadcasting Annual Return*, Circular No. 404, 23 August 1994

Appendix to Broadcasting Regulatory Policy CRTC 2022-332

Summary of determinations

Common Ownership Policy

The Commission maintains the current definition of a market.

The Commission amends the Common Ownership Policy (COP) limits as follows:

- for markets with eight commercial radio stations or more operating in a given language, a person may be permitted to own or control as many as four stations, with a maximum of three stations within one frequency band (FM or AM) in that language; and
- for markets with fewer than eight commercial radio stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with no limits on frequency band.

Local management agreements and local sales agreements

The Commission maintains the current definition of a local management agreement (LMA) and it considers LMAs beyond unprofitable stations, when they satisfy the following criteria:

- the number of stations owned by the parties in the market complies with the threshold set in the COP;
- the effective control of each undertaking remains exercised by their respective licensees;
- each licensee maintains distinct and separate programming and news services;
- each licensee remains responsible for their management, including the program director and the news director, as well as any other related staff assigned to programming and/or news activities; and
- the LMA includes a provision that prohibits parties of the LMA acquiring exclusivity on advertising.

The Commission no longer considers local sales agreements (LSA) as LMAs when they meet the following criteria:

- the LSA does not involve a number of stations that is above the number of stations allowed in the COP;
- there is confirmation that LSAs are set for a limited period of time, as a locked-in agreement would impact the effective control of the radio stations;
- the ownership of all assets must remain with each licensee;

- separate, distinct news and other programming services and management must be maintained;
- each licensee must retain responsibility for the news and other programming staff employed by its undertaking(s); and
- the LSA includes a provision that prohibits parties of the LSA from acquiring exclusivity on advertising.

The Commission expects parties that are entering into LSAs that comply with the above-mentioned criteria to notify and file their agreement with the Commission 30 days prior to the execution of the agreement. LSAs which do not meet the above criteria will be considered to be LMAs and will still require pre-approval.

Canadian content development contributions

The Commission intends to initiate a follow-up proceeding to seek comments on:

- modifying the approach to basic Canadian content development (CCD) contributions by calculating basic CCD payments based on the annual radio revenues of the ownership groups rather than on a station-by-station basis;
- the appropriate level of information that broadcasters should provide on the discretionary portion of their CCD contributions;
- whether a portion of basic CCD contributions should go to a new fund or if the Commission should instead encourage or require that a portion of the contributions be directed to established funds and initiatives supporting Canadian diversity and Indigenous artists;
- the allocation for basic CCD; and
- the collection of gender- and race-based data, as well as data about Indigenous Peoples, persons with disabilities and people who identify as 2SLGBTQI+ from the eligible initiatives benefiting from CCD contributions.

Depending on the outcome of the follow-up proceeding, the Commission may make amendments to the *Radio Regulations, 1986* (the Regulations) to implement any changes to the basic CCD contribution system.

The Commission adds community radio stations to the list of eligible recipients of discretionary CCD contributions. It also amends the eligibility criteria to include audio-content initiatives by community radio stations and racialized people, as follows:

Audio-content initiatives advancing the specific objectives of the Canadian broadcasting system as outlined in the *Broadcasting Act*, such as those created by community or Indigenous radio stations and other specialized audio-broadcasting services dedicated to meeting the particular needs and interests of children, Indigenous Peoples, people with disabilities, and racialized people.

The Commission maintains the current tangible benefits percentage at a minimum of 6% of the value of the transaction as well as the current allocation for tangible benefits, but specifies that 60% of the 3% be allocated to the Radio Starmaker Fund and 40% to Fonds RadioStar, and that 60% of the 1.5% be allocated to FACTOR and 40% to Musicaction.

Canadian musical selections

The Commission intends to amend the Regulations so that musical selections would be considered Canadian if they meet at least two of the three following conditions:

- the music is, or the lyrics are, performed principally by a Canadian;
- the music is composed principally (at least 50%) by a Canadian; or
- the lyrics are written principally (at least 50%) by a Canadian.

The Commission intends to amend the Regulations to maintain the status of Canadian selections that have been considered Canadian under the existing system, as well as to apply the new criteria and points to all existing and new musical selections going forward.

Content categories and subcategories

The Commission has published *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2022-333, 7 December 2022, to replace *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010, which outlines the following changes:

- amend the definition of content category 35 (Non-classic religious); and
- amend the definition of content category 21: Pop, rock and dance to eliminate the reference to charts.

The Commission intends to amend the Regulations to change the reference to *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010 to refer to *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2022-333, 7 December 2022.

Canadian content requirements for content categories

The Commission maintains the current minimum 35% Canadian content requirements for content category 2 (Popular Music).

The Commission maintains the current minimum of 10% of Canadian content requirements for musical selections from content category 3 (Special Interest Music), of 25% of musical selections from content subcategory 31: Concert and 20% for musical selections from content subcategory 34: Jazz and blues.

French-language vocal music

The Commission maintains its current practice of considering a musical selection as French-language vocal music (FVM) if more than 50% of the duration of the vocal portion of the selection is in French. For clarity, the Commission notes that onomatopoeia or other non-intelligible vocal parts (known as “non-lexical vocables”) are not considered part of the vocal portion when calculating its duration.

The Commission maintains the quota-based system for FVM at the current level of 65% in each broadcast week and 55% between 6:00 a.m. and 6:00 p.m., Monday to Friday.

Broadcast week and peak listening period

The Commission maintains the current definitions of broadcast week (seven consecutive broadcast days, beginning on Sunday; with the broadcast day beginning at 6:00 a.m. and ending at midnight) and the peak listening period (6:00 a.m. to 6:00 p.m., Monday to Friday).

Policy on emerging artists

The Commission maintains the current definitions of emerging artists for the few stations that have a condition of licence in this regard.

The Commission expects commercial radio stations that are not already required by condition of licence to broadcast music by emerging artists to devote, in each broadcast week, at least 5% of their musical selections to selections broadcast in their entirety from Canadian emerging artists who conform to the following updated definition:

A Canadian artist shall be considered an emerging artist until a period of 48 months has elapsed since the release of the artist’s first commercially marketed song.

For the purpose of this definition, the concept of artist includes duos, trios or groups of artists operating under a defined identity. If a member of a duo, trio or group begins a solo career or creates with other partners a new duo, trio or group with a new identity, the solo artist or duo, trio or group shall be considered an “emerging artist” according to the above criteria.

The Commission expects commercial radio licensees subject to this expectation to report annually on how they have met the expectation set out above, including the percentage of selections from Canadian emerging artists and the number of distinct artists whose music they have broadcast. Commercial radio licensees should also be able to provide, upon request, information such as a list of all titles, artists, and International Standard Recording Code (ISRC) numbers.

Hits Policy in bilingual markets

The Commission removes the application of the hits policy from the bilingual markets of Ottawa-Gatineau and Montréal.

The Commission has published *Revised conditions of licence for AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2022-334, 7 December 2022, to replace *Conditions of licence for AM and FM radio stations*, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009, which removes the application of the hits policy on the bilingual markets of Ottawa-Gatineau and Montréal.

The Commission intends to initiate a proceeding to seek comments on the hits policy in the context of campus radio stations.

Montages

The Commission intends to amend the Regulations to remove the notion of duration of montage excerpts, and to remove montage from the definition of a musical selection.

Local programming

The Commission maintains the definition of local programming.

The Commission will continue to monitor the situation, both through content monitoring and any regulatory change resulting from the potential new legislative review, and will address any concerns on a case-by-case basis.

Indigenous music and artists

The Commission expects commercial radio broadcasters to include Indigenous music in their playlists based on the following provisional definition of Indigenous-created music:

“Indigenous-Canadian musical selection” is defined as a musical selection written or performed by an individual who has Canadian citizenship and who self-identifies as Indigenous, which includes First Nations, Métis or Inuit.

The Commission also expects commercial radio broadcasters to report annually on the amount of Indigenous content aired including the percentage of Indigenous musical selections and the number of distinct artists whose music they have broadcast.

Commercial radio licensees should also be able to provide, upon request, information such as a list of all titles, artists, date and time of broadcast and ISRC numbers.

Diversity

The Commission will gather more information from FACTOR, Musicaction, Radio Starmaker Fund, Fonds RadioStar and the Community Radio Fund of Canada about their current initiatives that support diversity in audio content creation (both music and spoken word) and what portion of their funding is directed towards supporting those initiatives through its follow-up proceeding on CCD contributions.

HD Radio

The Commission maintains its current approach to HD Radio. The Commission may consider a public consultation process if there is a need for formal HD Radio regulatory framework when the Department of Industry's consultation process regarding integrating HD Radio into its Broadcast Rules and Procedure for FM radio is completed.