



## Broadcasting Public Notice CRTC 2006-158

Ottawa, 15 December 2006

### Commercial Radio Policy 2006

*In this public notice, the Commission sets out its revised policy for commercial radio. Areas addressed include airplay and financial support for Canadian music and French-language vocal music, cultural diversity, local management agreements and local sales agreements, local programming and infomercials. The Commission considers that the measures announced in this policy, particularly its new approach to Canadian content development, will allow the commercial radio sector to contribute more effectively to the achievement of the goals set out in the Broadcasting Act, while enabling it to operate effectively in an increasingly competitive environment for the delivery of audio programming.*

*This public notice is one of three issued following the Commission's review of its policy for commercial radio announced in Review of the commercial radio policy, Broadcasting Notice of Public Hearing CRTC 2006-1, 31 January 2006, and that was the subject of a public hearing in the National Capital Region that began on 15 May 2006. The other two public notices are Revised policy concerning the issuance of calls for radio applications and a new process for applications to serve small markets, Broadcasting Public Notice CRTC 2006-159, 15 December 2006, and, Digital Radio Policy, Broadcasting Public Notice CRTC 2006-160, 15 December 2006.*

*Dissenting opinions by Commissioners Cram and Langford are attached.*

### Introduction

1. In *Review of the Commercial Radio Policy*, Broadcasting Notice of Public Hearing CRTC 2006-1, 13 January 2006 (the Notice), the Commission announced that it would hold a public hearing commencing on 15 May 2006 to review its commercial radio policies and invited comments on the matters set out in the Notice.
2. The Notice set out the following overall objectives for the review:

To develop policies that assist in creating conditions for:

- A strong, well-financed commercial radio sector in both official languages capable of contributing to the fulfillment of the policy objectives set out in the *Broadcasting Act* (the Act).

- A commercial radio sector that makes effective contributions to Canadian artists through airplay of Canadian music, French-language vocal music, and contributions to Canadian talent development (CTD) that are commensurate with the financial health of the sector.
  - A commercial radio sector that provides listeners with a greater diversity of musical genres, and airplay for a greater variety of Canadian artists in both official languages.
  - A commercial radio sector that reflects the multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples within society.
  - A commercial radio sector that provides listeners with an appropriate amount of regularly-scheduled, locally produced news and information.
  - A commercial radio sector capable of making the transition to digital transmission, and of exploiting new and emerging distribution platforms in a manner that furthers the objectives of the Act.
3. The Commission received 194 written comments in response to the Notice, and 48 parties made oral presentations at the hearing, which took place between 15 May and 18 May 2006. Participating parties included private individuals, unions and guilds, commercial radio broadcasters, including the Canadian Association of Broadcasters (CAB), not-for-profit radio broadcasters and various representatives from the Canadian music industry.
  4. In general, commercial radio broadcasters stressed that, since the Commission's last review of radio in 1998 (the 1998 Review), which resulted in *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998 (the 1998 Commercial Radio Policy), there has been a proliferation of alternative technologies for the distribution of music to consumers. In their view, it is likely that these devices will continue to proliferate and become more sophisticated and attractive in the next few years. While there is little evidence so far of an impact on broadcasters' revenues, commercial radio broadcasters submitted that a significant effect on listeners' habits is inevitable, and the financial performance of commercial radio stations may well decline as a result. Commercial radio broadcasters also presented their views on the Commission's current radio policies and discussed possible changes in some areas.
  5. Other parties cited the generally positive financial results that commercial radio broadcasters have enjoyed since 1998 and argued that the commercial radio industry was in a good position to strengthen its contributions to the achievement of the objectives set out in the Act, particularly with respect to the airplay of Canadian and French-language music, the exposure of emerging artists, and monetary assistance for CTD. The parties also raised a number of other issues, which are addressed throughout this public notice.
  6. During the public hearing, the Commission asked seventeen parties to file additional information by 29 May 2006. All participants were afforded the opportunity to file final comments on any topic covered by the review by 12 June 2006.

## **The radio broadcasting environment**

### **The evolving marketplace for the delivery of audio programming**

7. The delivery and consumption of audio programming has changed dramatically since the 1998 Review. The marketplace within which commercial radio stations compete is evolving with the advent of new regulated and unregulated technologies. Such new audio technologies include MP3 players, iPods and other personal media devices, Internet music services and radio streaming, including streaming over wireless broadband, podcasting, peer-to-peer file sharing and downloading, cell phone radio, and satellite radio. New technological innovations are constantly being introduced into this marketplace. However, despite this competitively challenging economic environment and a decline in overall tuning to conventional radio since 1999, the Canadian commercial radio industry remains healthy from a financial perspective, as discussed below.

### **Tuning to conventional radio**

8. Overall weekly listening levels to conventional radio decreased by roughly one hour and twenty-five minutes from 1999 to 2005 to 19.1 average weekly hours tuned per capita. The decrease is most notable in the teen demographic (12-17) and for adults aged from 18 to 34.
9. Emerging technologies and more media choices will continue to erode in-house and at-work listening. Higher cell phone, MP3 and satellite radio penetration will increasingly challenge in-car listening. As a result, audiences to conventional radio are expected to decline over the next several years.

### **The current financial health of the Canadian commercial radio industry**

10. Canadian commercial AM and FM radio stations, as a group, experienced an average annual growth in total revenues of 5.5% between the broadcast years 2001 and 2005. Increases in the limits on the number of stations that a licensee may own in a single market established by the 1998 Commercial Radio Policy resulted in a consolidation of radio ownership, enhanced operational synergies and improved profitability.
11. French-language commercial AM and FM radio revenues totalled \$208 million in 2005, an increase of 7% from 2004 to 2005. French-language radio has experienced an average annual revenue increase of 5% over the past four years. The profit before interest and taxes (PBIT) of French-language commercial radio totalled \$23.7 million in 2005, an increase of 3.6% from the previous year. Average PBIT margin was 13.57% during the 2001-2005 period. Revenues for French-language FM radio increased by 10.6% from 2004 to 2005 and by an average of 7% per year over the past four years. However, revenues for French-language AM radio decreased by 23% from 2004 to 2005 and by an average of 8.5% per year over the last four years.

12. English-language commercial AM and FM radio revenues totalled \$1.1 billion in 2005. Total revenues increased by 9% from 2004 to 2005, and enjoyed an average annual growth rate of 5.8% over the past four years. The PBIT of English-language commercial radio totalled \$249.6 million in 2005, an increase of 26.6% from the previous year. Average PBIT margin was 19.25% during the 2001-2005 period. English-language FM radio revenues increased by 11.3% from 2004 to 2005, with an average annual increase of 8% per year over the past four years. English-language AM radio revenues increased by 2% from 2004 to 2005 and achieved 2001 revenue levels.
13. The number of English-language radio stations continues to increase annually. Roughly 55% of the new English-language FM stations reporting in 2005 were by licensees who had converted their AM stations to the FM band.
14. Total revenues for ethnic radio increased 11.6% from \$31.2 million in 2004 to \$34.8 million in 2005. A significant portion of this increase was due to two new FM radio stations, CJSA-FM Toronto and CKDG-FM Montréal, which reported for the first time in 2005. Total revenues achieved by ethnic radio stations increased by an average of 5.7% per year over the past four years.
15. PBIT for all Canadian AM and FM stations combined increased from \$171 million (16% of total revenues) in 2001 to \$277 million (20.8% of total revenues) in 2005.
16. PBIT grew at an average annual rate of 14.3% for English-language stations, but only by 0.1% for French-language stations, between 2001 and 2005. PBIT margins for English-language stations mirrored the growth seen overall in the radio industry. However, the average PBIT margin for French-language stations has gradually declined from 13.8% in 2001 to 11.4% in 2005.
17. The PBIT of all Canadian AM stations rose from a loss of \$16.9 million in 2001 to a profit of \$13.6 million in 2005.
18. FM stations remain the main contributor to profit in the commercial radio sector. FM PBIT grew at an average annual rate of 8.8%, from a total of \$188 million (margin of 24.7%) in 2001 to \$263.3 million (margin of 25.5%) in 2005.

#### Commercial radio's strengths

19. The current levels of radio profitability are a function of general economic activity, industry consolidation and the industry's competitive advantages over other media. Radio's competitive strength can be attributed to the factors listed below.
  - Radio's focus on issues of interest to the local community generates substantial audience reach and revenue from local business.
  - Radio's lower media and commercial production costs, relative to television, make it an attractive medium for advertisers.

- Morning and afternoon drive periods provide a captive audience for radio advertising.
  - Radio advertising can be targeted to a specific demographic, based on station format and the region that the station serves.
  - Radio listening levels remain strong in the summer months while television viewing decreases.
  - Network television has generally shifted away from local advertising in recent years to regional and national advertising, leaving the local business to radio.
20. To date, radio has been able to use its competitive advantages to more than offset declines in tuning with increases in advertising rates.

**The future impact of new technologies on conventional radio**

21. The key challenge facing the radio industry is to keep radio relevant and local in an environment of rapidly changing technology and consumer behaviour.
22. According to a study conducted by Jeff Osbourne for the CAB (the Osbourne Study), radio broadcasters generally view the Internet as a complementary way to connect with their listeners. The Osbourne Study noted that tests were underway to use the Internet as a cost-effective programming research tool, but that it does not appear that anyone has found the formula for substantially recouping Internet costs from advertisers.
23. The Osbourne Study found that, among advertisers and media planners, podcasting is generally perceived as a positive development that may help radio broadcasters repatriate younger listeners. The study did not anticipate that podcasting would have a significant negative impact on radio advertising revenues in the short or medium term.<sup>1</sup>
24. According to the CAB's submission, while the short term impacts of the parallel, for the most part unregulated, systems of new audio technologies may be modest, their combined effect may result in a reduction in tuning levels to conventional radio, followed, eventually, by a loss of advertising revenue.
25. The CAB developed two scenarios for the likely future impact of new technologies on tuning to conventional radio: the low impact scenario and the high impact scenario. These scenarios were based on assumptions relating to impact on tuning under each scenario in four locations – at home, in vehicles, at work, and in all other locations.
26. Based on these assumptions for tuning by location compounded over a 10-year period, the resulting impacts on overall tuning levels were determined under each of the two scenarios. The estimated declines in overall tuning levels were expressed as a percentage reduction in the tuning levels that would otherwise have been achieved.

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<sup>1</sup> CAB Submission, Appendix B, Osborne 2006, p. 29.

27. The CAB's model linked estimated declines in total hours tuned to estimated declines in advertising revenues. Based on its model, impact on revenue lags behind the impact on tuning in the short term. However, as the impact on tuning increases, the impact on revenues becomes greater.
28. The CAB submitted that, under its low impact scenario, a 4.9% reduction in overall tuning in Year 5 would lead to a 1% reduction in advertising revenues. Under its high impact scenario, an 8.5% reduction in overall tuning in Year 5 would lead to a 3% reduction in advertising revenues.
29. The CAB provided estimates of the impact of new technologies against 2005 radio revenues. In Year 5, under the CAB's low impact scenario, radio advertising revenues would be \$13 million less than actual 2005 revenues. In Year 10, under the CAB's low impact scenario, radio advertising revenues would be \$62 million less than actual 2005 revenues.
30. In Year 5, under the CAB's high impact scenario, radio advertising revenues would be \$39 million less than actual 2005 revenues. In Year 10 of the CAB's high impact scenario, radio ad revenues would be \$189 million less than actual 2005 revenues.<sup>2</sup>
31. It is apparent from the above that, while the radio industry is currently healthy, it is entering a period of uncertainty as it comes to grips with the challenges and opportunities that will be provided by new technologies for the distribution of audio programming. Many radio broadcasters are themselves exploring ways of using new distribution platforms to complement the service provided by their conventional radio stations. **In addition to continuing to monitor how new distribution technologies for audio programming are affecting the radio industry, the Commission also intends to question radio licensees, at licence renewal and in new licensing and ownership transfer proceedings, about their plans to employ new distribution platforms to the benefit of the Canadian broadcasting system.**

### **Airplay and financial support for Canadian music, including French-language vocal music**

32. The Canadian broadcasting system has an important role to play in showcasing the work and contributing to the development and promotion of Canadian artists. Section 3(1)(d)(ii) of the Act provides that the Canadian broadcasting system should "encourage the development of Canadian expression by ... displaying Canadian talent in entertainment programming..." Section 3(1)(e) of the Act provides that "each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming." Section 3(1)(f) provides that "each broadcasting undertaking shall make maximum use, and in no case less than

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<sup>2</sup> CAB Submission, paragraphs 114 and 115.

predominant use, of Canadian creative and other resources in the creation and presentation of programming unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources.”

33. The commercial radio sector contributes to the fulfilment of the objectives set out above in two ways. The first is through the airplay of Canadian music, including French-language vocal music, which provides a showcase for the work of Canadian artists. The second is through financial contributions to CTD that are commensurate with the financial health of the sector. These development initiatives help ensure the availability and promotion of high quality Canadian music, and other creative material, for broadcast.

### **Current approach**

Airplay

*Canadian music*

34. Section 2.2 of the *Radio Regulations, 1986* (the Radio Regulations) sets out the minimum levels of Canadian musical selections required of radio stations holding commercial licences. The Radio Regulations require that at least 35% of the popular (category 2) musical selections and at least 10% of the special interest (category 3) musical selections aired during each broadcast week be Canadian selections.
35. To ensure that Canadian selections are not relegated to times when relatively small audiences are tuned to radio, such as on weekday evenings and on weekends, the Radio Regulations also require that at least 35% of the category 2 musical selections broadcast between 6:00 a.m. and 6:00 p.m., Monday through Friday during any broadcast week, be Canadian selections.
36. The Radio Regulations provide that a musical selection must generally meet at least two of the criteria set out below in order to qualify as a Canadian selection. This is commonly referred to as the MAPL system.
37. **M** (music) – the music is composed entirely by a Canadian.  
**A** (artist) – the music is, or the lyrics are, performed principally by a Canadian.  
**P** (production) – the musical selection consists of a live performance that is recorded wholly in Canada, or performed wholly in Canada and broadcast live in Canada.  
**L** (Lyrics) – the lyrics are entirely written by a Canadian.
- The musical selection was performed live or recorded after 1 September 1991, and a Canadian who has collaborated with a non-Canadian receives at least half of the credit as a composer and lyricist.

*French-language vocal music*

38. To ensure that French-language radio stations holding commercial licences serve the needs and interests of their audiences, section 2.2 of the Radio Regulations requires that at least 65% of the category 2 vocal musical selections aired by French-language stations during each broadcast week be in the French language. To ensure that French-language vocal selections are not consigned to periods with relatively small audiences, the Radio Regulations also require that at least 55% of the category 2 vocal musical selections aired by French-language stations each week between 6 a.m. and 6 p.m., Monday through Friday during any broadcast week be French-language selections.

*Emerging Canadian artists*

39. The 1998 Commercial Radio Policy noted that representatives of the music industry had stressed the importance of providing opportunities for the commercial radio audience to hear music by new Canadian artists. As a result, the Commission indicated that it had considered the possibility of establishing a quota requiring the airing of a minimum percentage of selections by such artists. It also considered bonus incentives to increase airplay of musical selections by new Canadian artists, whereby the broadcast of each recording by a new Canadian artist would count for more than one Canadian selection when calculating the total number of Canadian selections to establish compliance with the regulated requirements for Canadian music. However, the 1998 Commercial Radio Policy concluded that a quota system would be difficult to apply fairly to stations operating in different formats, and that an incentive system could entail a reduction in the overall level of Canadian music broadcast.

Financial support for Canadian talent development

40. Radio broadcasters make commitments to CTD as part of three regulatory processes: licence renewals, the transfer of the ownership or control of radio undertakings, and as part of applications for new licences.
41. In *Contributions by radio stations to Canadian Talent Development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995 (Public Notice 1995-196), the Commission introduced an approach that has resulted in most stations adhering to a condition of licence requiring minimum annual direct payments to eligible third parties involved in CTD according to the contribution levels identified in the CAB's *Distribution Guidelines for Canadian Talent Development* (the CAB Plan). The contribution levels for individual stations were based on the size of their market by population. The CAB Plan was designed to ensure at that least \$1.8 million would flow to eligible third parties each year. During the 2004-2005 broadcast year, the total of all contributions made to fulfill conditions of licence imposed during licence renewals was \$2.83 million.
42. In the 1998 Commercial Radio Policy, the Commission required that parties seeking to acquire ownership or control of profitable radio undertakings make CTD commitments in the form of tangible benefits of no less than 6% of the value of transactions. The benefits must be distributed as follows:

- 3% to a new Canadian music marketing and promotion fund,
  - 2% to the Foundation Assisting Canadian Talent on Recordings (FACTOR) or MUSICACTION, at the discretion of the purchaser, and
  - 1% to either of the above initiatives, to other CTD initiatives, or to other eligible third parties as described in Public Notice 1995-196.
43. The broadcasting industry subsequently established the Radio Starmaker Fund and Fonds Radiostar in 2000 to fill the role of the music marketing and promotion fund.
44. Contributions to CTD from ownership transfers are typically made in seven equal annual instalments. Such contributions totalled \$12.24 million during the 2004-2005 broadcast year.
45. From 1999 through 2005, the Commission considered 226 applications for new radio undertakings at competitive hearings, almost all of which proposed commercial FM stations. It licensed 81 new stations as a result of those hearings. During the same period, the Commission also licensed numerous other radio stations as the result of non-competitive licensing processes. While many applicants for new stations proposed to adopt the standard condition of licence requiring participation in the CAB Plan referenced above, most also proposed additional contributions that exceeded the minimum levels required by the CAB Plan, some by a very wide margin.
46. CTD proposals associated with applications for new radio licences usually entail contributions that are paid in equal annual instalments over a seven-year period. Total CTD contributions made by new stations amounted to \$5.79 million during the 2004-2005 broadcast year.

#### **Positions of parties**

*Airplay*

*Canadian music*

47. In the Notice, the Commission requested comments on, among other things, the possibility of broadening the variety of Canadian artists receiving airplay through an increase in the minimum level of Canadian category 2 musical selections from 35% to 40%. The Notice also pointed out that most of the commercial radio stations that operate in the specialty format are governed by individual conditions of licence, rather than the minimum 10% level of category 3 music set out in the Radio Regulations. The Commission asked whether this approach should continue or whether the minimum level of category 3 music set out in the Radio Regulations should be raised.
48. Parties representing the music industry, broadcasters, guilds and unions, other interested organizations, as well as individual members of the public made suggestions regarding the appropriate level of Canadian music to be aired.

49. Most parties other than broadcasters recommended increases in the current minimum levels of Canadian musical selections that must be broadcast. Such parties included the Canadian Music Publishers' Association (CMPA), the Alliance of Canadian Cinema, Television, and Radio Artists (ACTRA), the Canadian Independent Record Production Association (CIRPA), and the Songwriters' Association of Canada (Songwriters). Songwriters suggested the highest level: 55% for category 2 selections. All of these parties submitted that there is an adequate supply of Canadian selections that are worthy of airplay in all genres, and some contended that an increase would reduce over-reliance on a few Canadian artists, a phenomenon known as "artist burn."
50. CIRPA proposed a minimum level of 45% for Canadian category 3 musical selections. The Canadian Conference of the Arts (CCA), l'Association québécoise de l'industrie du disque du spectacle et de la vidéo (ADISQ) and the Canadian Music Centre (CMC) proposed new requirements for higher levels of Canadian concert music (subcategory 31) and jazz and blues music (subcategory 34). Concert music generally includes classical, opera and extended excerpts from popular musicals.
51. The CMC submitted that, while popular music stations require a constant supply of new material, classical and jazz music has a much longer shelf life and the overall inventory becomes significant. Evidence was submitted that the Canadian Music Industry Database contains more than 2,200 jazz and blues and more than 1,000 classical recordings.
52. The CAB and other commercial radio broadcasters supported the current required levels for Canadian category 2 musical selections, although some suggested relatively minor adjustments in areas such as the level required of "oldies" stations. They argued that listeners are not seeking more Canadian music, and that increases in the required percentages of Canadian category 2 musical selections would increase the use, by current radio listeners, of alternative methods of hearing their favourite foreign music, such as CDs, the Internet, satellite radio, iPods, and MP3 players. In support of this view, the CAB cited data from Statistics Canada indicating that Canadian recordings only comprised 17% of total sales of recordings in 1998 and 16% of total sales of recordings in 2000 and 2003. In their view, an increase would, in fact, increase artist burn. In the view of the CAB and other commercial broadcasters, the higher levels of Canadian music required by the 1998 Commercial Radio Policy, and the subsequent amendments to the Radio Regulations, caused too many stations to adopt gold-based formats, reducing the variety of music formats available to listeners.

*French-language vocal music*

53. In the Notice, the Commission asked, among other things, whether the current regulatory provisions had been successful in ensuring that a diversity of French-language vocal music (MVF) and artists is being aired, or whether a reduction in the MVF requirements might assist in achieving this objective.

54. The Quebec-based music industry, including Artisti, La Guilde des musiciens et musiciennes du Québec (GMMQ), la Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada inc. (SODRAC), la Société professionnelle des auteurs et des compositeurs du Québec (SPACQ), and l'Union des artistes (UDA) generally supported the retention of the current MVF requirements, as did l'Alliance des radios communautaires du Canada (ARC du Canada) and l'Alliance des radios communautaires du Québec (ARC du Québec), among others.
55. The Ministère de la culture et des communications du Québec (MCCQ) supported the retention of current MVF levels, but requested that a portion of this quota be devoted to music by emerging French-language artists.
56. L'ADISQ submitted that, based on its observations, French-language stations were broadcasting more English-language selections than French-language selections during peak listening periods despite the regulation that requires a minimum level of 55% French-language vocal selections between 6 a.m. and 6 p.m., Monday through Friday. According to l'ADISQ, the likely explanation for this is heavy use of montages of English-language music, which can entail the broadcast of many abridged English-language musical selections. L'ADISQ argued that the Radio Regulations should be amended to limit the abusive use of English-language montages to circumvent MVF requirements.
57. On the other hand, CAB members operating French-language stations maintained that the current MVF levels have a negative effect on the diversity of music formats available to listeners. They also stated that, because Francophone youth, in particular, seeks out music in English, they are under heavy competition for Francophone listeners from English-language stations in the bilingual markets of Montréal and Gatineau-Ottawa.
58. The CAB therefore proposed an incentive-based system to increase the airplay of emerging artists whereby new musical selections by new artists would receive a 150% credit when assessing compliance with the MVF portion of the Radio Regulations. A selection would be considered "new" for 12 months after its first appearance on a chart published by l'ADISQ in *Le Palmarès*, and an artist would be considered to be a "new artist" for four years from the date his or her first selection appeared on the chart.
59. L'ADISQ further suggested the implementation of a quota system under which half of the 65% of the musical selections that are required to be in the French language over the broadcast week, and 40% of the 55% MVF requirement over the 6 a.m. to 6 p.m. period Monday to Friday, would have to qualify as "new selections." All selections by an artist whose first album was released no more than two years before the date the selection was played would be considered as a "new selection" for the purpose of the quota.

60. Astral Media Radio inc. (Astral) presented a plan whereby broadcasters would choose from one of three options requiring minimum levels of Canadian musical selections and MVF selections that would differ according to the percentage of new musical selections or selections by new artists that a station would air. The musical formats of the stations would influence the broadcasters' choices.

*Emerging Canadian artists*

61. The Notice solicited responses to questions about the possibility of increasing the airplay of selections by emerging artists, including the appropriate level, the most effective regulatory approach to ensure airplay, and potential definitions of the term "emerging Canadian artist."
62. A large number of broadcasters and music industry representatives responded to the Commission's questions about encouraging the airplay of selections by emerging artists. Commercial radio broadcasters unanimously favoured approaches that would provide a bonus for the airplay of such selections when calculating the percentage of Canadian music that a station plays.
63. The CAB recommended the introduction of a bonus system, to be known as "Smart 35." Under the CAB's system, radio broadcasters would receive a 125% credit towards the fulfilment of Canadian music requirements when a musical selection by an emerging Canadian artist is played between 6:00 a.m. and 6:00 p.m., Monday to Friday.
64. The CAB suggested that, for the English-language markets, a performer be considered as an "emerging Canadian artist" up until 12 full months after the date the artist's first selection reaches the Top 40 on Broadcast Data System (BDS) or Mediabase all-format charts, or becomes gold certified for the first time.
65. According to the CAB, the minimum level for Canadian category 2 musical selections, before applying its bonus system, should be 30%, so that any station playing emerging artists would never fall below that level.
66. Music industry representatives were generally supportive of incentive proposals to encourage the airplay of emerging Canadian artists, although many cautioned that such approaches must be accompanied by safeguards to ensure that the overall level of Canadian musical selections is not reduced. However, some, including CIRPA and the Canadian Independent Recording Artists' Association (CIRAA), were opposed to incentives due to that potential effect, and instead proposed quotas for the airplay of emerging artists. Several proposed definitions of the term "emerging Canadian artist" for regulatory purposes.

67. As an example of a quota system to encourage the airplay of emerging Canadian artists, CIRAA proposed that no less than 33.3% of Canadian musical selections played during the 6 a.m. to 6 p.m. daytime period and no less than 50% of the Canadian selections aired between 6 p.m. and midnight during weekdays and weekends be selections by emerging Canadian artists. Stations with formats that cannot play emerging Canadian artists by definition (e.g. classic rock, oldies) would require an exemption from this quota.

Financial support for Canadian talent development

68. The Notice solicited comments on what types of initiatives are most effective for CTD, whether the 6% requirement for ownership transactions remains appropriate, whether the overall \$1.8 million target for eligible third parties in the context of licence renewals remains appropriate in 2006, and whether CTD amounts for stations within the CAB Plan that are now tied to market size should instead be tied to individual stations' revenues, as well as on other matters.
69. Most music industry representatives recommended increases in the radio sector's overall contributions to CTD initiatives, with suggested levels ranging from \$10 to \$17 million per year, and/or 1% – 2% of the radio industry's total revenues. Based on the data supplied in broadcasters' annual returns that are submitted to the Commission, 1% of the radio industry's total revenues amounted to \$13.33 million for the 2004-2005 year.
70. Several music industry representatives suggested that stations' contributions be based on a percentage of revenues when licences are being renewed, while others favoured an approach based on "percentage of profits." Paul Audley & Associates was retained by l'ADISQ and recommended two possible alternative methods of assuring that a least \$16.5 million would be raised for CTD through the renewal of licences, based on 2003-2004 annual return data. One method would employ a formula based on percentages of revenues that would increase from smaller to larger stations; the other was based on a formula whereby the percentage of revenues of ownership groups would increase from smaller to larger groups.
71. The MCCQ argued that it would be more equitable to establish the level of contribution based on a station's revenues rather than based on the size of the market in which the station operates.
72. A coalition composed of nine provincial and territorial Music Industry Associations (the MIAs) from the Yukon Territory, British Columbia, Alberta, Saskatchewan, Manitoba, Northern Ontario, Nova Scotia, New Brunswick, and Newfoundland and Labrador was concerned with new and emerging artists as well as the lack of variety on station playlists. The MIAs argued that the music industry is best placed to develop Canadian

talent, and that contributions should be directed to organisations whose mandates specifically reflect the development of the music industry. The MIAs were of the view that the majority of contributions should go to FACTOR/MUSICACTION and the Radio Starmaker Fund and Fonds Radiostar, with the rest going to regional grassroots development undertaken by the provincial and territorial MIAs.

73. The MIAs recommended that the minimum requirement for CTD funding at the time of ownership transfers be raised from 6% to 10%, with 1% dedicated to the MIAs, yielding \$2 million per year. Some other parties also suggested that the minimum requirement in the case of ownership transfers be increased to 10%.
74. Other proposals related to CTD funding came from the National Campus and Community Radio Association (NCRA) in conjunction with ARC du Canada and ARC du Québec. These parties requested \$5 million to aid in the development of community broadcasting. La Fondation Radio Enfants requested \$500,000 for a fund dedicated to the development of young radio talent. Aboriginal Voices Radio Inc. (AVR) proposed that the CTD policy be modified to allow CTD funding to be directed to support AVR or any native broadcaster featuring music and spoken word programming that is predominantly and distinctively Aboriginal. Such funds would be used for the development, operations and expansion of the Canadian native radio broadcasting infrastructure. The Centre for Research-Action on Race Relations (CRARR) recommended that a portion of CTD funds be earmarked or allocated to diverse talent and program development.
75. The CAB stated that the Radio Starmaker Fund and Fonds Radiostar was its preferred single avenue for the bulk of future CTD contributions by broadcasters. The CAB argued that distributing all contributions to these organizations would maintain a minimum yearly support level for the Radio Starmaker Fund and Fonds Radiostar, as well as bring about standardized reporting and accounting practices for all funds. Regarding the minimum amounts in applications for ownership transfers, the CAB proposed that 5% of the value of the transaction be allocated between the Radio Starmaker Fund and Fonds Radiostar.
76. The CAB explained that the private radio industry wants to target CTD funding at initiatives that have a direct relationship with the content that is played by its stations, as opposed to programs that are more “infrastructure” oriented, such as marketing support for independent music labels, business development grants and video production. The CAB therefore proposed that, in the future, only the following programs within FACTOR and MUSICACTION would receive support:
  - new musical works programs, excluding initiatives that support video production;
  - touring and showcasing grants for artists not eligible for Radio Starmaker Fund or Fonds Radiostar funding;
  - songwriter workshop grants under the collective initiatives programs in the case of FACTOR; and
  - support to lyricists and composers, in the case of MUSICACTION.

77. Regarding the amounts dedicated to CTD funding, the CAB proposed that the current system continue unaltered for two years following the Commission's announcement of its new policies in other areas. In year 2, the CAB would consult with the music industry to assess market conditions and establish a new CTD agreement for years 3, 4 and 5. The CAB explained that negotiations would be conducted taking into consideration the total amounts actually received from the broadcasting industry by eligible third parties during the preceding three years, as well as relevant financial indicators and market conditions.
78. The CAB justified its approach by making reference to the uncertainty related to both the amount of CTD funding that will be available over the next several years and the health of the radio sector as competition from unregulated media continues to grow.
79. Nonetheless, the French-language stations of the CAB proposed that, if the Commission were to conclude that immediate increases in contributions to CTD were advisable, the amounts based on the current market size requirements could be increased to reflect inflation in the period between the establishment of the CAB Plan in 1995 and the present. The increase for each market would amount to 25%.
80. The Ontario Independent Radio Group (OIRG), an alliance of independent Ontario broadcasters, advocated a cap on the amount of CTD contributions that could be proposed by applicants for new licences. However, the Jim Pattison Broadcast Group Limited Partnership opposed such a cap, stating that applicants should be free to present CTD plans that would deliver the maximum benefits to the Canadian broadcasting system.

#### **Commission's analysis and determinations**

81. In this section, the Commission sets out its revised approach to airplay for Canadian music, including French-language vocal music, and to development initiatives. In order to reflect a new emphasis on development initiatives that lead to the creation of audio content for broadcast using Canadian resources, the Commission considers that it is appropriate to replace the expression "Canadian talent development" (CTD) with "Canadian content development" (CCD). The Commission's approach involves a number of changes to the requirements related to airplay, and focuses primarily on CCD. The Commission considers that well-targeted CCD initiatives allocated to the support, promotion, training and development of Canadian musical and spoken-word talent will increase the supply of and demand for high-quality Canadian music in a variety of genres as well as enlarge the supply of spoken word material for broadcast.

## Airplay

### *Category 2 selections*

82. The Commission has taken note of the suggestions made, mainly by representatives of the music industry, that there are supplies of Canadian music in most genres that would permit increases in the required minimum levels of Canadian category 2 musical selections. It also notes, however, the arguments made by the commercial radio industry that demand by listeners for more Canadian music has not been demonstrated, and that listeners, especially youth, are turning more and more to unregulated sources of music.
83. The minimum levels of Canadian category 2 selections were increased, by regulation, from 30% to 35% in 1999 as a result of the 1998 Review. This has led to a substantial increase in the total amount of Canadian music available to radio listeners. Many stations, especially French-language stations, have exceeded the minimum levels. However, Commission studies have not indicated that there has been a meaningful increase in the airplay of selections by new and emerging Canadian artists by English-language stations.
84. A number of statistics were cited with respect to the sale of Canadian recordings. Evidence provided by CIRPA, and according to *The Canadian Music Industry 2005 Economic Profile* issued by the Department of Canadian Heritage, indicates that Canadian artists' share of the top 2,000 album sales tracked by Soundscan increased upward between 16% and 25% between 1998 and 2005. The CAB cited data from Statistics Canada indicating that Canadian recordings comprised 17% of total sales of recordings in 1998 and 16% of total sales of recordings in 2000 and 2003. The Commission is of the view that these sales figures do not indicate a level of demand that would support a further increase in the required levels of Canadian category 2 selections at this time.
85. The Commission is also not convinced that a further increase in the required levels of Canadian category 2 music is the best way to foster the airplay of music by emerging Canadian artists, and is concerned that an increase could lead to more repetition of the musical selections by Canadian artists that are already established. Further, it does not consider that an increase to the required level of Canadian category 2 music is appropriate at a time when the radio industry must respond to the challenge of competing with new, largely unregulated sources for the delivery of audio programming.
86. **Accordingly, the Commission will retain the existing requirements respecting the levels of category 2 Canadian selections set out in the Radio Regulations.**

*French-language vocal music*

87. With respect to French-language vocal music, the Commission notes comments by representatives of the music industry that increases in the required minimum levels would be achievable. It also notes, however, the comments by French-language broadcasters that MVF levels are too high, leading to high levels of repetition for the most popular selections and artists.
88. The Commission notes suggestions for bonus systems related to MVF, whereby selections by emerging Canadian French-language artists would receive additional weight in meeting the required MVF levels. However, the Commission is concerned that implementation of a bonus system, such as that suggested by the CAB where a selection by an emerging Canadian French-language artist would receive a 150% credit toward meeting MVF requirements, would lead to a decrease in the total number of MVF selections that are played. It further notes that, since the more stringent MVF requirements were established in 1999, Commission studies indicate that there has been an increase in the airplay of selections by emerging Canadian artists on French-language stations. The Commission is satisfied that the current MVF requirements are having a positive effect and does not consider that they should be amended at this time. As is the case with category 2 music, the Commission is concerned about raising the required MVF levels at a time when the radio industry must respond to the challenges of competing with new, largely unregulated technologies for the delivery of audio programming.
89. **In light of the above, the Commission will retain the existing requirements respecting the levels of French-language vocal musical selections in category 2 for commercial broadcasters set out in the Radio Regulations.**

*Emerging Canadian artists*

90. The Commission notes suggestions made by many parties for either quotas or incentive systems for increasing the airplay of musical selections by emerging Canadian artists. However, an incentive or bonus system such as that suggested by the CAB, where a selection by an emerging artist would receive a 125% credit toward meeting requirements for Canadian selections, would lead to a decrease in the number of Canadian musical selections that are played. The Commission also remains of the view that, as stated in the 1998 Commercial Radio Policy, it would be difficult to apply either an incentive or a quota system fairly to stations operating in different formats because the playing of music by emerging Canadian artists is not appropriate for all formats. To mitigate this effect, and the possibility that the variety of formats might be reduced due to additional requirements, exemptions for “oldies” stations would be necessary, and perhaps for other types of stations as well. The Commission is further concerned about the potential effects of imposing additional regulations related to the airplay of music by emerging Canadian artists at a time when the number and attractiveness of alternatives to commercial radio for the delivery of music to consumers is increasing.

91. In light of the difficulties with a common approach for all stations set out above, the Commission considers that a system under which commitments to broadcast selections by emerging Canadian artists and to promote such artists are assessed on a case-by-case basis taking into account the particular circumstances of each station would be more appropriate. The Commission considers that this approach will provide broadcasters with the flexibility to tailor their commitments with respect to emerging Canadian artists to the musical genres that they feature in their programming.
92. **Accordingly, applicants for new licences, licence renewals and transfers of ownership or control of radio stations will be asked to make specific commitments to provide airplay for and to promote emerging Canadian artists and their music. Following the public process in each case, the Commission may decide to impose conditions of licence.**

*Category 3 selections*

93. With respect to airplay for category 3 selections, the Commission has considered the suggestions of parties advocating an increase in the requirements for Canadian concert and jazz music. It notes the CMC's argument that, while popular music stations require a constant supply of new material, classical and jazz music have a much longer shelf life when it is suitable for airplay. The Commission further notes that most commercial specialty format stations that have assumed conditions of licence obliging them to play a predominance of music from either subcategory 31 (concert music) or subcategory 34 (jazz and blues) have conditions of licence requiring levels of Canadian music in category 3 that are higher than the current regulatory levels. It therefore considers that a modest increase would bring the regulations more in line with the levels of Canadian music that are actually played by stations offering formats based on music from subcategory 31 or 34, while still providing such stations with the flexibility to respond to competition from new sources of audio programming.
94. **Accordingly, the Commission considers it appropriate to require that at least 25% of musical selections from subcategory 31 (concert music) and at least 20% of subcategory 34 selections (jazz and blues) aired during each broadcast week by commercial radio stations be Canadian. The Commission will therefore issue, and seek comment on the wording of, proposed amendments to the Radio Regulations. The amended regulations will, however, not immediately affect radio licensees that are currently subject to conditions of licence related to airplay for Canadian category 3 musical selections. In such cases, current conditions of licence will continue to apply until the end of the licence term.**

### *Montages*

95. Regarding the issue of montages, the Commission emphasizes the importance of playing musical selections in their entirety. However, the Commission has recognized that there can be positive aspects to programming montages.<sup>3</sup> Properly used, montages allow audiences to discover new Canadian artists or selections that would not otherwise be broadcast. The Commission is, however, of the view that montages should not be used to circumvent the regulatory requirements related to MVF.
96. **Accordingly, the Commission will closely monitor the use of montages and will deal with any problems on a case-by-case basis, imposing necessary measures when appropriate.**

### **Canadian content development**

97. In light of the growth in revenue and profitability that the radio industry has experienced since the 1998 Review, and given that an increased demand for Canadian music has not been demonstrated as discussed earlier, the Commission considers that additional emphasis should be placed on the development and promotion of Canadian talent through financial contributions by broadcasters to the development of audio content for broadcast. Such initiatives will not only help to develop and advance the careers of emerging Canadian artists but will increase the supply of high-quality Canadian music in a variety of genres and the demand for Canadian music by listeners. They will also enlarge the supply of spoken word material for broadcast. Further, the initiatives can also be tailored in a flexible manner that is representative of the programming and revenues of particular stations. Stations make CCD commitments at the time of licence renewals, when applications for new licences are considered, and as tangible benefits at the time of the transfer of ownership and control of radio undertakings.
98. In order to make the most effective use of these financial contributions, the Commission considers that such contributions should be used to fund initiatives that lead to the creation and promotion of audio content for broadcast using Canadian resources. This is achieved by the support, promotion, training and development of Canadian musical and spoken word talent, including journalists. In light of this approach, initiatives not targeted to the development of Canadian audio content, such as visual arts exhibitions, theatre and dance will no longer qualify for contributions by radio broadcasters.

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<sup>3</sup> *Regulations Amending the Radio Regulations, 1986 – Commercial Radio Programming*, Public Notice CRTC 1998-132, 17 December 1998,

99. CCD initiatives by broadcasters are important at the local, regional and national levels. In reflecting the circumstances of their local communities, local initiatives by broadcasters can provide an important first step in the discovery and showcasing of new artists. Not-for-profit MIAs, operating in most regions, foster new and emerging talent. They do valuable work with those very early in their careers, providing various forms of support, information, communication, education, as well as business and market development services. These also support artists as they develop their professional careers.
100. At the national level, FACTOR and MUSICACTION are the most important vehicles for the development of a variety of Canadian artists, including new and emerging artists. In operation since the mid-1980s, FACTOR and MUSICACTION are well-known and established organizations that have implemented a variety of programs that have resulted in the emergence of many well-known Canadian artists.
101. Programs such as those supporting new recordings, touring and showcasing are especially valuable for artists who do not qualify for funding from the Radio Starmaker Fund or Fonds Radiostar. The Collective Initiative grants program, supported, in part, by funding from the Department of Canadian Heritage, underwrites initiatives by music organizations, including the MIAs, that sustain the development of such artists, including emerging songwriters.
102. The Commission notes that the Department of Canadian Heritage has initiated a program providing financial assistance to certain Canadian recording firms. These firms, as participants in this program, are no longer eligible for funding from FACTOR or MUSICACTION. More funding from FACTOR or MUSICACTION will therefore likely be available for programs that support emerging Canadian artists.
103. The Commission notes comments by parties concerning the necessity for accountability and transparency with regard to CCD. In this regard, the Commission commends FACTOR and MUSICACTION for the very detailed accounting of their activities in their latest annual reports.
104. The Radio Starmaker Fund and Fonds RadioStar were created following the 1998 Review. These funds provide support for the marketing and promotion of established artists, contributing to their national and international success. The Radio Starmaker Fund and Fonds RadioStar are the largest recipients of financial support from radio broadcasters, and the Commission commends them for adjusting their eligibility criteria for certain less-established categories of music. The Commission encourages these funds to provide similar flexibility to other types of music for niche audiences, thereby further recognizing the diversity of Canadian musical talent.

105. The Commission notes that, at the hearing, questions were raised about a few instances where there was a lack of communication between FACTOR and the Radio Starmaker Fund, in situations where artists submitted invoices for refunds to both organizations. The Commission was assured that these problems were resolved, and encourages both organizations to continue to communicate fully on such matters. The Commission notes that MUSICACTION and Fonds RadioStar share a common administration.

Eligible initiatives

106. As noted above, stations make CCD commitments to support FACTOR and MUSICACTION as well as to the Radio Starmaker Fund and Fonds RadioStar. Commitments to FACTOR and MUSICACTION may be made at the time of licence renewal, as part of applications for new licences and as commitments in the context of applications to transfer the ownership and control of radio undertakings. Commitments to the Radio Starmaker Fund or Fonds RadioStar are made only in the context of applications to transfer the ownership or control of radio undertakings.
107. The Commission is adopting a revised list of other CCD initiatives that are eligible for CCD contributions. This list replaces the lists and descriptions of eligible initiatives set out in *An FM policy for the nineties*, Public Notice 1990-111, 17 December 1990 and Public Notice 1995-196. Contributions should be dedicated to initiatives that will provide high quality audio content for broadcast. All CCD initiatives must involve direct expenditures, and must be allocated to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists.
108. **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 (MIAs).**
  - **Schools and educational 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 musical 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, Native radio and other specialized audio broadcasting services dedicated to serving the particular needs and interests of children, Aboriginal peoples, and persons with disabilities.**

109. Regarding ineligible initiatives, the Commission maintains its position that grants to schools and educational institutions offering courses in broadcasting or devoted to the continuing education of radio station staff will not qualify. Memberships by broadcasters in music associations and broadcasters' fees for attendance at conferences are also not eligible.
110. Licensees should ensure that contributions are spent on Canadian resources only, except on rare occasions, such as foreign touring or showcasing, where the promotion of Canadian talent necessarily entails some costs incurred outside the country.
111. In proposing CCD projects, applicants should provide sufficient details to clearly show how the initiatives contribute to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists. Licensees will be required to provide details about the CCD projects funded by their stations in their annual returns.
112. The Commission is confident that increasing amounts of well-targeted funding for CCD will lead to the expansion of activities at all levels of the music industry and to the creation of larger pools of high quality music by emerging Canadian artists, including Canadian French-language artists.

The three levels of CCD contributions

113. In this section, the Commission sets out its approach to CCD contributions made at three levels: a basic annual CCD contribution, additional contributions over and above the basic CCD contribution related to applications for new licences, and contributions made in relation to applications for the transfer of ownership or control of radio undertakings.

*Basic annual CCD contributions*

114. Each station holding a commercial radio licence makes annual financial commitments to CCD at the time of licence renewal, which are applied by condition of licence. Most stations currently adhere to the contribution regime set out in the CAB Plan, which establishes five contribution levels according to the size of each market by population. Annual contribution levels range from \$400 for the smallest markets to \$27,000 for the largest markets. The CAB Plan was adopted at a time when the radio industry was emerging from a period of financial difficulty. As stated earlier, the financial position of the industry has, on the whole, been healthy for some years now, but the contribution regime does not entail automatic adjustments to reflect the evolving financial situation of radio broadcasters. As well, some of the smaller radio players in large markets are at a marked disadvantage under the current market-based approach, which mandates the same funding level for all stations in the same market, regardless of the size of the stations' revenues.

115. In consideration of the growth in revenue and profitability radio has enjoyed, the Commission has determined that a basic CCD contribution system, applied as a regulation, based on stations' revenues rather than on the size of the market in which they operate, is more appropriate. Such an approach will ensure that stations with comparable revenues make comparable payments. It will also take into account the unique circumstances of small stations regardless of the size of their markets and automatically adjust for changes in the financial situation of radio stations. This system will apply to all stations holding a commercial radio licence, including such stations licensed in the future.
116. **The total amount of each station's basic annual CCD contribution will be determined as follows:**
- **Stations with total revenues in the previous broadcast year of less than \$625,000 will make a fixed contribution of \$500.**
  - **Stations with total revenues in the previous broadcast year between \$625,000 and \$1,250,000 will make a fixed contribution of \$1,000.**
  - **Stations with total revenues exceeding \$1,250,000 in the previous broadcast year will contribute \$1,000 plus 0.5% of the portion of the previous year's total revenues that exceeds \$1,250,000.**
117. Annual returns from radio broadcasters from the 2004-2005 broadcast year indicated that \$2.83 million was generated in basic contributions imposed through the renewal of licences under the previous plan. The Commission estimates that, if the revised CCD policy were applied to the 2004-2005 broadcast year, \$4.10 million would have been generated from the new basic annual CCD contribution. The Commission considers that the new levels will provide a reasonable level of assured funding for CCD initiatives.
118. **To ensure continuity of assured funding, no less than 60% of the basic annual CCD contribution must be forwarded to FACTOR or MUSICACTION. The remaining amount may be directed to any eligible CCD initiative, at the discretion of the licensee.** The distribution of funds in all of Canada's regions is of critical importance, and the Commission expects that FACTOR and MUSICACTION will continue their efforts to develop talent in all regions of Canada, in all popular music genres.
119. Because they operate stations that make relatively limited use of Canadian music, ethnic licensees or those airing predominately spoken word material will not be required to contribute to FACTOR or MUSICACTION. They will be free to direct their payments to eligible initiatives that support their content.
120. **In order to implement these measures, the Commission will issue, and seek comment on the wording of, a proposed amendment to the Radio Regulations requiring stations holding commercial licences to make a *basic annual CCD contribution* based on their revenues. It is expected that the new regulation will become effective on 1 September 2007.**

121. The Commission notes that contributions currently paid by radio licensees are established by condition of licence. **As a transitional measure, the new basic annual CCD contribution model will allow for deductions of amounts paid under these conditions of licence from the total amount payable under the new model. For example, if a broadcaster pays \$400 dollars annually by condition of licence under the CAB Plan, this amount would be deducted from the total amount payable under the basic annual CCD contribution model.**
122. Stations currently subject to conditions of licence concerning CCD arising from their original licensing will continue to fulfill those commitments until they have been fully discharged.

*Additional CCD contributions related to applications for new licences*

123. Applicants make commitments for CCD in the context of applications for licences to operate new commercial radio stations. Such commitments, especially when made in the context of a competitive process, often exceed the minimum levels required under the CAB Plan. Annual returns from radio broadcasters from the 2004-2005 broadcast year indicate that \$5.79 million in payments were made by stations to fulfill commitments made in the process of obtaining a new licence.
124. Since all stations licensed in the future will be subject to the new regulation requiring a basic annual CCD contribution, applicants for new commercial radio licences will include CCD payments as part of their proposed business plan. As is the case today, such applicants may wish to make CCD commitments over and above the basic annual CCD contributions. In such instances, **no less than 20% of an applicant's funding commitment that is over and above the basic annual CCD contribution must be allocated to FACTOR or MUSICACTION.** The remaining amount could be directed to any eligible CCD initiative, at the discretion of the applicant. These commitments will continue to be imposed by condition of licence.

*Contributions in relation to applications for the transfer of ownership or control of radio undertakings*

125. Applicants make commitments to CCD in the context of applications for the transfer of ownership or control of radio undertakings. Such applicants are currently required to make a minimum direct financial contribution of 6% of the value of the transaction to CCD. Annual returns from radio broadcasters from the 2004-2005 broadcast year show \$12.24 million in benefit payments pursuant to transfers of ownership.
126. The Commission considers that it is appropriate to retain the current policy of requiring a financial contribution of 6% of the value of the transaction to CCD, as well as the exemption applied to the acquisition of unprofitable undertakings. The current distribution of the contribution will also remain unchanged:

- 3% to be allocated to the Radio Starmaker Fund and Fonds Radiostar;
- 2% to FACTOR or MUSICACTION;
- 1%, at the discretion of the purchaser, to any eligible CCD initiative.

#### Conclusion

127. Total CCD contributions from radio broadcasters were \$20.87 million in 2005. The Commission projects that, if the new system were applied to the 2005-2006 broadcast year, total contributions to CCD would have risen by between \$3.5 million and \$4 million.
128. The Commission strongly encourages licensees to contact the organizations mentioned above, and other recipients of their CCD funds, in order to establish payment schedules that are convenient to all parties. All funds must be paid in full by the end of the broadcast year.

### **Cultural diversity**

#### **Current approach**

129. Since the late 1990s, the Commission has made cultural diversity one of its key priorities. When the Commission refers to cultural diversity, it is referring to the inclusion of groups that have been traditionally under-represented in broadcasting: ethnocultural minorities, Aboriginal peoples, as well as persons with disabilities. Such under-representation includes these groups' presence and portrayal on the air and their participation in the industry.
130. The Commission expects broadcasters to share the responsibility for assisting in the development of a broadcasting system that reflects these under-represented groups. This is in accordance with section 3(d)(iii) of the Act, which states that 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 aboriginal peoples within that society."
131. In response to this goal, the 1998 Commercial Radio Policy encouraged broadcasters to "reflect the cultural diversity of Canada in their programming and employment practices, especially with respect to news, music and the promotion of Canadian artists."
132. In the case of television, the Commission's strategy to date has been two-fold: (a) requiring all broadcast groups to file corporate plans at licence renewal as well as annual progress reports, and (b) the creation of an industry/community Task Force for Cultural Diversity on Television to undertake research and develop best practices and industry initiatives. This strategy has recently come to include persons with disabilities

as well.<sup>4</sup> While there may be parallels to radio that could be drawn from the experience of implementing this strategy for television thus far, the Commission considered it essential that the industry and public have an opportunity to share their views on the unique challenges of making radio more reflective of Canada's cultural diversity.

### **Positions of parties**

133. In response to questions set out in the Notice, 20 parties commented on the question of how to address diversity in radio. Nine broad issues were identified by the parties:
- the business case for diversity in radio;
  - the importance of local representation for inclusion and accurate reflection;
  - the need for inclusive and balanced programming, particularly in news and public affairs;
  - the particularities of French-language radio that may limit efforts to improve diversity;
  - the role of community and ethnic radio in contributing to diversity in the radio sector as a whole;
  - the lack of opportunities for reflection of Aboriginal peoples, including lack of airplay for Aboriginal music;
  - the role of CCD in fostering diversity;
  - the role of diverse ownership as a means to ensure full participation of minorities in radio; and
  - best practices and annual reporting on diversity for radio licensees.

The business case for diversity in radio

134. In their respective submissions, the New Canada Institute, the CAB and CKUA Radio referred to the "business case for diversity in radio." According to the New Canada Institute, this issue involves focusing on local service and the capacity to serve local communities. Similarly, the CAB referred to the recognition of business and community relevance, i.e., the need for private radio to adapt to a more diverse customer base in order to remain competitive. The business case for diversity in radio hence comprises several aspects of diversity such as the importance of local representation for inclusion and accurate reflection, a specific issue raised by a number of participants in this proceeding including the New Canada Institute, la Fédération nationale des communications (FNC), ARC du Québec and CKUA Radio. CHUM and CRARR also expressly raised the particular need for inclusive and balanced programming in news and public affairs as a key aspect of business and community relevance.

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<sup>4</sup> See *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*, Broadcasting Public Notice CRTC 2004-2, 21 January 2004 (paragraphs 51-53).

#### Incorporating diversity in radio

135. In addition to raising the importance of local representation, the New Canada Institute emphasized various programming and corporate aspects to take into account when assessing cultural diversity in radio. These aspects included music, spoken word, phone-in shows, community outreach, public service announcements, CCD and ownership. CHUM was of the view that the representation of diversity should focus on genres of programming that are generally produced by the radio stations themselves, such as news, information and community programming, as opposed to music playlists, which are often dictated by research and sales data, and are consequently more challenging for program directors to design based on diversity objectives.

#### Recognizing the particularities of French-language radio

136. The CAB, CRARR, Impératif français and l'Association des communautés françaises de l'Ontario (ACFO) commented, in their written submissions, on the particularities of French-language radio in advancing cultural diversity in radio. For instance, the CAB highlighted the fact that there is a greater reliance on network programming in French-language radio in comparison with English-language radio, and consequently, less opportunity for French-language stations to be programmed on an individual basis. CRARR submitted that “perspectives and speakers of interest and concern to members of minority and Aboriginal communities are completely neglected and omitted from radio programming,” especially in French-language radio, while Impératif français and l'ACFO supported a greater diversity in programming as long as this objective was pursued with a focus on French-language programming.

#### The role of community and ethnic radio in contributing to diversity

137. L'ARC du Québec, iBiquity, Impératif français and l'ACFO stressed the unique role that community and ethnic radio play in contributing to diversity in the radio sector as a whole. In particular, l'ARC du Québec recommended creating a fund for community broadcasting, in light of the crucial role of community radio in broadcasting a diversity of formats, musical genres and emerging artists. Magda de la Torre also suggested that the CAB membership take into account and tap into the wide variety and talent pool that exist in the various ethnic media, for instance to make local and community news more representative of the community's diversity.

#### The role of CCD in fostering diversity

138. Some interveners cited the role that funds like FACTOR, MUSICACTION, the Radio Starmaker Fund and Fonds Radiostar can play in fostering cultural diversity. CRARR recommended that a portion of these funds be earmarked or allocated to diverse talent and program development. The CAB noted that radio can extend its support to more diversity initiatives in leveraging discretionary funds, for instance, with cultural organizations becoming eligible recipients, with monies targeted towards education,

mentorship, scholarship, outreach and other initiatives related to the broadcasting system. AVR recommended that funding for Aboriginal music and spoken word be utilized for the development, operations and expansion of native radio infrastructure in light of the lack of airplay for Aboriginal music on commercial radio, and lack of opportunities for reflection of Aboriginal peoples.

The role of diverse ownership as a means to ensure full participation of minorities in radio

139. The New Canada Institute and CRARR raised the role of independent ownership, as well as diverse and minority ownership as a means to ensure full participation of minorities in radio. The New Canada Institute submitted that diversity in radio ownership involves the capacity for minorities to own radio stations beyond ethnic stations. For that purpose, it recommended that the Commission give preference to small companies and new applicants at radio hearings to ensure that minorities can own part of the mainstream of the broadcasting system.

Best practices and annual reporting on diversity

140. This issue, which includes extending the Commission's cultural diversity approach in television to radio, was the primary focus of discussions at the public hearing concerning cultural diversity in radio. It was also addressed in additional comments submitted by the CAB, CRARR, the New Canada Institute and Magda de la Torre in comments filed after the hearing. This issue is the focus of the Commission's analysis and determinations in this public notice.
141. The CAB recognized the need to advance cultural diversity within the commercial radio industry. The CAB submitted that the radio industry had shown the necessary commitment and transparency to achieve this objective in proposing a set of tools for improving diversity in commercial radio. These tools include best practices for radio licensees to follow, as well as a general template for reporting annually to the Commission on implementing diversity initiatives arising from the best practices.
142. CHUM supported the establishment of best practices and annual reporting as outlined by the CAB. CRARR submitted that radio stations should address diversity and employment equity in annual reports, where applicable.

*The need for further research*

143. In discussing best practices and annual reporting, some parties raised the question of whether research specific to cultural diversity in radio is needed prior to implementing an approach such as the one proposed by the CAB. The CAB, on the other hand, took the position that no research specific to cultural diversity in radio is necessary at the present time. The CAB was of the view that the industry has completed sufficient research and consultations through the Task Force for Cultural Diversity on Television and the Report on the Presence, Portrayal and Participation of Persons with Disabilities

in Television Programming, which both built on experiences in Canadian and international media to advance diversity. According to the CAB, conducting further research on diversity in radio would delay the process of implementing best practices by radio broadcasters.

144. Contrary to the CAB, CRARR was of the view that there is a risk that the CAB's proposed guidelines, which are similar to those developed for television, would become theoretical in an environment where most radio licensees are small and have less structured human resources practices than large television corporations. Accordingly, CRARR recommended establishing a task force for cultural diversity in radio, which would include radio broadcasters, and be responsible for reviewing the work of the Task Force for Cultural Diversity on Television in order to more appropriately extend the Commission's current approach to radio. Magda de la Torre recommended that a specific study of audience measurement mechanisms be conducted as well, in order for radio companies to better understand and reflect current demographic realities.
145. The CAB and CHUM were confident that best practices in implementing cultural diversity in television can be adapted to radio.
146. In its final comments the New Canada Institute expressed concern that the tools developed by the CAB lacked concrete measures and specific targets, and to that effect, it suggested tangible examples to foster diversity in radio, such as the production of a radio show portraying world music, which would play music from around the world and highlight Canadian artists of various origins and the inclusion of sports news of interest to various cultural groups, such as soccer and cricket.

#### **Commission's analysis and determinations**

147. The Commission commends the CAB's initiative in proposing that the commercial radio industry build on the experience developed by the television industry to improve the presence and portrayal of Canada's cultural diversity – ethnocultural minorities, Aboriginal peoples and persons with disabilities. The Commission is of the view that the CAB's best practices on cultural diversity and general template for reporting annually to the Commission filed in the proceeding represent positive and effective tools for radio licensees. Furthermore, the Commission considers that a task force on cultural diversity in radio is not necessary at this stage, given the substantive research and consultation undertaken concerning diversity in television.
148. However, the Commission notes that the public record of this proceeding, with the exception of CHUM's intervention, makes little mention of the particularities or the specific challenges of making radio more reflective of Canada's cultural diversity. In this regard, the Commission notes that the best practices do not address the role that talent development and emerging Canadian artists can play in fostering cultural

diversity in commercial radio. The selection and promotion of new and emerging artists from ethnocultural minorities, Aboriginal peoples and persons with disabilities can contribute to a better reflection of the diversity of Canada's artistic talent, by increasing the diversity of voices and musical genres in radio. Accordingly, the Commission is of the view that the CAB should amend its best practices to address this important area.

149. In addition, the CAB's best practices make no specific reference to the inclusion of persons with disabilities. The Commission considers the inclusion of persons with disabilities to be an integral element in the reflection of cultural diversity. Given the issues and barriers faced by persons with disabilities most recently identified by the industry research on the presence, portrayal and participation of persons with disabilities in television programming in 2005, the Commission considers that the CAB's best practices should be modified in order to take this group into account.
150. **In accordance with the above, the Commission requires the CAB to amend its best practices and to file a revised version with the Commission no later than three months from the date of this public notice. The Commission expects all commercial radio licensees to adopt the revised best practices, once approved.**
151. With respect to the CAB's proposal for annual reporting by radio licensees, the Commission is of the view that the annual reporting template provided by the CAB will ensure accountability on the part of radio licensees and provide the Commission and the public with the means to measure progress in improving the reflection of Canada's diversity in radio.
152. However, given the various concerns raised by interveners about the specific circumstances and challenges of small radio operators, such as limited human resources and reporting capacity, the Commission considers the CAB's annual reporting proposal is best suited to large commercial radio groups. The Commission considers it appropriate that larger corporate groups be accountable through annual reporting to the Commission since they have greater corporate capacity than small radio operators. Additionally, several large radio groups hold both radio and television licences and therefore already have established reporting experience for the cultural diversity initiatives pertaining to their television stations.
153. **Accordingly, the Commission requires the CAB to develop a specific approach for small commercial radio stations. At a minimum, this approach should address, for the purposes of reporting on cultural diversity, the criteria the Commission should use to determine which radio licensees should be considered "small" and why. It should also address the most appropriate reporting mechanism for such stations, including frequency of reporting.**

154. **The CAB must file its proposal for small radio licensees with the Commission no later than six months from the date of this Public Notice. Upon receipt of the CAB's revised best practices and the proposal for small radio licensees, the Commission will determine when it expects radio licensees to commence filing reports.**

### **Local management agreements and local sales agreements**

#### **Current approach**

155. In *Local Management Agreements*, Public Notice CRTC 1999-176, 1 November 1999 (the 1999 LMA Policy), the Commission announced that it had adopted amendments to the Radio Regulations to include a provision, under section 11.1, that prohibits any licensee from entering into or operating its station(s) pursuant to a Local Management Agreement (LMA) without the Commission's prior approval and a condition of licence permitting it to do so. Section 11.1 defines an LMA as follows:

“local management agreement” means an arrangement, contract, understanding or agreement between two or more licensees or their associates that relates, directly or indirectly, to any aspect of the management, administration or operation of two or more stations that broadcast in the same market.

156. As indicated in the 1999 LMA Policy, the Commission evaluates LMAs on a case-by-case basis and takes into consideration the circumstances under which an LMA would be acceptable. As part of its evaluation of an LMA, the Commission examines the potential impact on diversity of voices and the dynamics or competitive forces in a given market. An LMA could be found to be acceptable on the basis that it does not constitute a change in the effective control of an undertaking. Consequently, the Commission expects that:

- parties to an LMA ensure that distinct and separate programming and news services are maintained, and that their management remains under the respective responsibility of each licensee. This includes the program director and the news director, as well as other related staff assigned to programming and/or news activities; and
- all assets of the undertakings involved in an LMA remain under the ownership of each respective licensee.

In addition, the Commission is generally disposed to approve LMAs that:

- include unprofitable stations;
- include a number of stations that does not exceed the number of undertakings that may be commonly owned under the 1998 Commercial Radio Policy; and
- are limited to a specific term and represent a temporary alternative business model that will allow the broadcasters to improve their performance.

157. On 31 January 2005, following the licence renewal of certain radio stations, the Commission issued *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 (Public Notice 2005-10). In Public Notice 2005-10, the Commission determined that Local Sales Agreements (LSAs) fall within the definition of an LMA set out in section 11.1 of the Radio Regulations. As a result, licensees of commercial radio stations serving the same market who wish to enter into an LSA, or any similar business arrangement, whether formal or informal, must first apply for Commission approval to obtain conditions of licence authorizing them to do so.
158. At the same time, the Commission indicated that it would review various aspects of the LMA Policy during the Commercial Radio Policy Review.
159. Aspects to be reviewed would include the context under which an LMA could be acceptable. For example, the Commission could consider whether an LMA should be employed only as a temporary alternative business model, and whether an LMA involving broadcasters operating radio stations in adjacent markets would fall within the definition of an LMA.

#### **Positions of parties**

160. The Competition Bureau (the Bureau) submitted comments, which included a detailed study conducted by Dr. Ralph Winter about the issue of LMAs and their potential impact in a given market.
161. In its submission, the Bureau stated that LMAs should be dealt with in the same manner as any other merger. It argued LMAs have the same competitive effects on advertising markets as a consolidation in ownership and should be subject to the same competitive analysis. The Bureau further submitted that LMAs will likely result in significant increases in local advertising rates. According to the Bureau, LMAs have an impact on competition in relevant advertising markets to the extent that they have the effect of entrenching or increasing the ability of radio stations to exercise market power by raising advertising rates or reducing quality. It submitted that the Commission should examine not only the competitive effect of LMAs on other stations, but also the effect on advertisers whose rates and choices are negatively impacted by LMAs.

162. The Bureau also stated that the combined control of radio stations through mergers or LMAs would lead to competition policy concerns when such control leads to a potential lessening of competition. It argued that radio advertising has no sufficiently close substitutes and, thus, competition principles would not justify expanding the product market to include other media in an LMA. Finally, the Bureau stated that attention must be paid to unique aspects of the radio market that make it difficult for competitors to respond to a post-merger price increase.
163. At the hearing, parties from the broadcasting industry, such as Newfoundland Capital Corporation, for Newcap Inc. (Newcap), the OIRG, the CAB and CHUM, provided their views on some of the points raised by the Bureau and on LMAs in general.
164. None of the broadcasters agreed with the Bureau's position that radio advertising has no sufficiently close substitutes.
165. The CAB argued that the Bureau's position flows from the wrong assumption. It submitted that LSAs, which ensure that one sales force sells all of the local advertising on behalf of two otherwise independent licensees, can have a very positive effect on radio and can enable the radio industry to present the medium more efficiently against other media and make the process easier for buyers. The CAB also argued that, when broadcasters talk about a business's radio budget, they are really referring to its advertising budget. Radio stations compete for this advertising budget with every other medium, especially in smaller markets where there is a local newspaper and perhaps a local television station and a couple of radio stations. In short, parties to an LSA are not competing for a share of radio budgets, but rather for a share of advertising dollars.
166. Newcap submitted that, because of the impact on revenues resulting from the termination of LMAs, its stations went from being profitable to being cash flow negative in every one of the markets involved. As a result, Newcap has invested more money, made changes and, in some cases, has applied for an extra licence. Newcap was of the view that, in small market situations, an LSA can make the difference between making money or not. It submitted that the ability to work together on sales brings a consolidated offering for advertisers in the marketplace and allows the stations involved to be more profitable.
167. Newcap also noted that most advertisers have advertising budgets so if there is an increase in what it costs to be on radio there will be a subsequent decrease on the amount spent on other media. Newcap also argued that, in a market where there is only one newspaper or one television station, or one billboard company for outdoor advertising, they will effectively set the rates and charge whatever they want.

168. The OIRG argued that radio operates in a competitive advertising market and that the benefits of LMAs or LSAs are very significant in that they enable stations to sell the product better and more efficiently. Furthermore, the OIRG advocated allowing LMAs and LSAs on a case-by-case basis to improve the profitability of stations in smaller markets by allowing operators to share costs such as traffic, accounting and engineering. The OIRG submitted that such an approach provides small market stations the same opportunity as large market clustered operations.
169. CHUM disagreed with the Bureau's position and was of the view that radio stations should be allowed to enter into an LSA as long as the number of stations in the arrangement complies with the ownership limits set out in the 1998 Commercial Radio policy as it applies to the market in question. CHUM agreed that the use of LSAs should be for local advertising only, and that the different owners should maintain distinct and separate programming services, distinct and separate news voices and distinct station operations.

**Commission's analysis and determinations**

170. As stated in Public Notice 2005-10, the Commission is concerned about the possible negative consequences of LMAs over time. The possible consequences include the potential disadvantage to which they subject competitors who are not party to them, the chilling effect such agreements may have on the decisions of potential new entrants, and the extent to which they may reduce, ultimately to the detriment of the services provided to the public, the incentive for some or all parties to an LMA to manage their stations efficiently, compete effectively and improve their programming. The Commission is particularly concerned about the potential impact that LMAs might have on the diversity of voices that exists in a given market.
171. Accordingly, the Commission specified in Public Notice 2005-10 that it would generally approve LMAs only where it was satisfied that the circumstances so warrant, taking into account the general principles and other relevant elements identified in the 1999 LMA Policy.
172. The Commission has considered the positions of parties relating to the appropriateness of LMAs in small radio markets. Contrary to the position of the Bureau, radio broadcasters were of the view that radio does compete for advertising in a market with other media. Accordingly, they considered that the use of LMAs is appropriate.
173. The Commission agrees with the interveners that radio competes with other media for advertising in a given market. However, it remains of the view that LMAs could have negative consequences.

174. Nonetheless, the Commission accepts the position of representatives of the radio industry that, in some instances, an LMA could be an appropriate arrangement to ensure the viability of the radio stations involved. For example, the use of an LMA could be acceptable in a market where the radio undertakings applying to operate under such an arrangement are i) the only stations serving the market, and there is no potential growth that would permit new entrants and, ii) in serious financial difficulties.
175. In cases where the Commission determines that an LMA is warranted, it will continue to require clear assurance from the applicant that the LMA will serve to sustain distinct and separate programming services and news voices through maintaining distinct and separate station operations in these areas.
176. Accordingly, as stipulated in the 1999 LMA Policy, the Commission will continue to evaluate proposed LMAs on a case-by-case basis. The Commission considers that an LMA could be found acceptable on the basis that it does not constitute a change in the effective control of an undertaking. Consequently, the Commission will continue to expect that:
- parties to an LMA ensure that distinct and separate programming and news services are maintained, and that their management remains under the respective responsibility of each licensee. This includes the program director and news director, as well as other related staff assigned to programming and/or news activities; and
  - all assets of the undertakings involved in an LMA remain under the ownership of each respective licensee.
177. The Commission will generally be inclined to approve LMAs that:
- include unprofitable stations;
  - include a number of stations that does not exceed the number of undertakings that may be commonly owned under the 1998 Commercial Radio Policy; and
  - are limited to a specific term and represent a temporary alternative business model that will allow the broadcasters to improve their performance.
178. **In light of concerns about the possible negative consequences of LMAs over time and the potential impact they might have on the diversity of voices that exists in a given market, the Commission considers that it would be appropriate to extend its LMA definition so that it applies to stations that operate in adjacent markets but whose contours overlap. Accordingly the Commission will issue, and seek comment on the wording of, a proposed amendment to the Radio Regulations that amends the definition of an LMA.**
179. The Commission will not consider, as part of its LMA definition, business arrangements such as tower space rental or equipment rental as well as arrangements for national sales activities.

180. The Commission further reaffirms its determination that LSAs fall within the definition of an LMA set out in section 11.1 of the Radio Regulations, as stated in Public Notice 2005-10.
181. Licensees of commercial radio stations that wish to enter into an LMA, or any similar business arrangement, whether formal or informal, must first apply for Commission approval to obtain conditions of licence authorizing them to do so.

## **Local programming**

### **Current approach**

#### General requirements

182. The Commission's local programming policy for radio was set out in *Policies for local programming on commercial radio stations and advertising on campus stations*, Public Notice CRTC 1993-38, 19 April 1993, and reaffirmed in the 1998 Commercial Radio Policy. Under the local programming policy, licensees of commercial FM stations in markets served by more than one private commercial radio station are required to devote at least one-third of the broadcast week to local programming. Commercial FM licensees broadcasting less than one-third local programming must, by condition of licence, refrain from soliciting or accepting local advertising.

183. Local programming is defined 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.

In their local programming, licensees must include spoken word material of direct and particular relevance to the community served, such as local news, weather and sports, and the promotion of local events and activities.

184. The requirement to devote at least one-third of the broadcast week to local programming does not apply to AM stations. The 1998 Commercial Radio Policy stated:

The Commission will ... generally maintain its case-by-case approach for AM stations. In the future, *all* AM stations will be asked to make commitments in their licence renewal applications to a minimum level of local programming, and to describe how they will provide sufficient service to their local communities. Conditions of licence will be imposed in cases where the Commission deems them to be appropriate

185. In renewing the licences of two Ontario FM radio stations, the Commission concluded that those stations had neglected, on an ongoing basis, their mandate to provide local programming services or had actually breached their conditions of licence requiring them to devote at least one-third of the broadcast week to local programming. As a result, those stations received short-term licence renewals. The Commission has also investigated several complaints about other stations concerning deficiencies in local programming in recent years.

*Local programming and ownership consolidation*

186. Section 3(1)(iv) of the Act states that the programming provided by the Canadian broadcasting system should “provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.” In response to this objective, the Commission has addressed concerns about concentration of ownership partly through its policy, modified most recently in the 1998 Commercial Radio Policy, which limits the number of radio licences a broadcaster may control in a particular market.
187. In the 1998 Commercial Radio Policy, the Commission noted concerns raised by several parties about the impact that consolidation of ownership could have on news programming. Those parties had emphasized the important role that radio plays in the dissemination of local news and information, and had expressed the view that local news coverage had declined in Quebec as a consequence of the consolidation of ownership that had occurred. The parties had expressed concern that this trend could continue if ownership requirements were loosened further.
188. The Commission concluded, however, that setting across-the-board requirements for levels of news and spoken word would not take into account the particular needs of different communities or the differing resources of licensees. The Commission therefore decided to adopt a case-by-case approach in assessing programming commitments in the context of ownership changes. Accordingly, applicants seeking to acquire ownership or control of more than one AM and one FM station in a given language and market are required to outline how their proposed programming will benefit the community and further the objectives of the Act. The Commission retained the option of requiring adherence, by condition of licence, to particular commitments made by applicants.
189. For example, in *Exchange of radio assets in Quebec between Astral Media Radio inc. and Corus Entertainment Inc.*, Broadcasting Decision CRTC 2005-15, 21 January 2005 (Decision 2005-15), the Commission approved applications by Astral and a wholly owned subsidiary of Corus Entertainment Inc. for authority to acquire several radio undertakings in Quebec as part of an exchange of assets. The Commission added conditions to the licences of the AM stations involved requiring minimum, and increasing, levels of local programming.

### Positions of parties

190. In the Notice, the Commission posed questions about the local programming policy, including whether FM stations should be obligated to broadcast a minimum amount of news and information and whether AM stations should be obligated to program a minimum level of local programming.
191. In general, those responding to the questions supported the current local programming policy, and many recommended that the current policies should not be changed.
192. Commercial radio broadcasters maintained that the Commission should continue its current policy of refraining from imposing specific minimum local programming requirements for AM stations, but review their situations at the time of their licence renewals. Rogers noted that new specific minimum local programming requirements for AM stations would merely jeopardize the financial viability of what is already an economically marginal sector of the industry, with no material benefits for local listeners. Moreover, commercial radio broadcasters submitted that the Commission should not consider a minimum news requirement for music-based FM stations because any such requirements would reduce the competitiveness of those stations in relation to other sources of audio programming.
193. The CAB submitted that private radio provides listeners with high levels of local programming, including news and information, and noted the medium's ability to reach large segments of the listening audience with public alerts at times of emergency. It argued that industry consolidation has delivered benefits to the broadcasting system and to the status of local programming and that consolidation has not led to more syndicated or network programming. Moreover, the CAB stressed that the private radio industry recognizes the inherent value of local programming and news programming for its listeners and intends to maintain its commitment to local communities, with a continuing emphasis on locally produced content.
194. The MCCQ acknowledged the important role that radio plays in providing local information and noted that production of local news can be a heavy burden for stations, especially those that are not part of a network. The MCCQ further noted that, in its second response to the June 2003 report of the Standing Committee on Canadian Heritage entitled *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*, the Government of Canada had acknowledged the importance of Canadians continuing to have access to information and public affairs programming that reflects a diversity of views and the perspectives of their community.
195. The FNC expressed concern about the "Montréalization of the airwaves,"<sup>5</sup> and argued that radio must provide local programming. The FNC submitted that certain radio licensees had taken advantage of the Commission's streamlined local programming requirements to abandon the listeners that they serve, thereby reducing the capacity of their stations to respond to changes.

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<sup>5</sup> "la montréalisation des ondes"

196. ARC du Canada pointed out that community radio responds to local needs for information and local identity, and proposed the creation of a community radio fund through broadcasters' CCD contributions. This fund would support local news and public affairs programming. The NCRA supported this proposal.
197. Friends of Canadian Broadcasting (Friends) cautioned that leaving the obligation to provide local news and information programming to voluntary commitments is not warranted, in view of the conflict of interest demonstrated when commercial radio undertakings seek to reduce local labour costs and import programming content from distant, often non-Canadian, locations.
198. L'ADISQ submitted that licensees must include in their programming spoken word of direct relevance to the communities that they serve, including local news, weather, and sports as well as the promotion of local activities and events. L'ADISQ also requested that all stations make formal commitments with respect to the coverage of local cultural events.
199. Le Conseil provincial du secteur des communications (CPSC) du Syndicat canadien de la fonction publique (SCFP) generally agreed with the Commission's definition of local programming set out in the 1998 Commercial Radio Policy but suggested that the second paragraph be amended to read as follows:
- [TRANSLATION] In their local programming, licensees must include spoken word material of direct and particular relevance to the community served, such as local news, weather and sports, and the promotion of local events and activities. *Licensees must serve their communities with newscasts consisting of information gathered and handled by their own teams of journalists.* (material that CPSC suggested be added is in italics.)
200. In addition, the CPSC requested that the Commission require licensees, by condition of licence, to offer at least 180 minutes of news per week. The length of newscasts could vary, but could never be less than two minutes. The CPSC further submitted that sports, weather and traffic reports should be presented outside of newscasts.
201. Michael Fockler, a broadcasting consultant, argued that regulations defining local market, principal marketing area and a one-third level of local programming are often misinterpreted and applied somewhat arbitrarily. Mr. Fockler submitted that some radio stations originate programming from a distant studio with no connection to the licensed market. In such situations, committed local broadcasters find it difficult to compete. These difficulties are compounded when licensees go beyond their mandated local market and become regional stations that provide minimal service to many communities and do not provide in-depth coverage to any community. In Southern Ontario, for example, Mr. Fockler submitted that large stations in urban centres claim to serve vast and disparate areas with little commonality and squeeze out broadcasters interested in targeting specific communities.

### Commission's analysis and determinations

202. Section 3(1)(i)(ii) of the Act states that the programming provided by the Canadian broadcasting system should be “drawn from *local*, regional, national, and international sources” (emphasis added). Local programming is of ongoing importance to local communities. As stated in the 1998 Commercial Radio Policy, “The radio industry has historically been the sector of the broadcasting system that has provided the lion’s share of programming addressing local issues and concerns. In many smaller communities, local radio stations are the only daily source of local news, information, and emergency messages.”

203. The Commission further recognizes the significance of local news coverage. As stated in *CHNO-FM Sudbury –Licence renewal*, Broadcasting Decision CRTC 2005-22, 31 January 2005:

One of the objectives of the broadcasting policy for Canada, as set out in the *Broadcasting Act*, is that the programming provided by the Canadian broadcasting system should offer a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern. The broadcast of news programming by commercial radio licensees, especially local news, is an essential aspect of their responsibility to ensure the provision of this diversity of views.

204. The majority of interventions filed in this process support the current policy with respect to local programming. The Commission further recognizes the efforts made by commercial radio operators to provide local information to their listeners.

205. As the number of other sources of music proliferates, programming that reflects the particular needs and interests of local audiences may constitute a defining feature that will allow commercial radio stations to remain competitive with other alternatives for the distribution of music. The Commission is further of the view that the most successful radio stations are those that provide effective local programming and service to their communities.

206. Accordingly, the Commission will maintain its one-third local programming requirement with respect to FM stations in competitive markets and the case-by-case approach for AM stations. **All applicants will be required, in their licence renewal applications, as well as in applications for new licences and for the transfer of ownership, to address local programming and to describe how the service they provide meets the particular needs and interests of their local communities. Should complaints or interventions be filed, the Commission will expect licensees to respond with suitable commitments, if required. Conditions of licence will be imposed where the Commission deems them to be appropriate.**

207. In order to provide greater clarity in respect of the programming elements that must be included in local programming, the Commission is rewording the second paragraph of the definition of local programming. The new definition will read:

**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.**

**In their local programming, licensees must incorporate spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports coverage, and the promotion of local events and activities.**

208. The Commission notes that many radio stations make use of a programming technique generally known as “voice tracking.” Using this technique, the contributions of announcers are recorded in advance and inserted into the programming mix at appropriate times. The Commission considers that programming produced using voice tracking qualifies as local programming when it fulfils the definition of local programming set out above.

## **Infomercials**

### **Current approach**

209. The Commission considers infomercials to be advertising (category 5), the amount of which is not regulated on commercial radio. There is currently no policy governing the airing of infomercials on radio.
210. The Commission’s current policy statements on infomercials are intended for television.<sup>6</sup> An infomercial is defined as television programming “exceeding 12 minutes in length that combines entertainment or information with the sale or promotion of goods or services into a virtually indistinguishable whole. It may also involve the promotion of products mentioned in distinct commercial breaks within the infomercial programming itself.”
211. The reference to “exceeding 12 minutes in length” reflects the fact that, in television, stations are limited to no more than 12 minutes per hour of advertising. Television stations wishing to exceed this limit in order to broadcast infomercials may file applications for conditions of licence permitting them to do so.

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<sup>6</sup> *Amendment to the Television Broadcasting Regulations, 1987 to permit, by condition of licence, the airing of “infomercials” during the broadcast day*, Public Notice CRTC 1994-139, 7 November 1994, and *Clarification of certain matters relating to the airing of “infomercials” during the broadcast day*, Public Notice CRTC 1995-93, 13 June 1995

212. Criteria for the broadcast of infomercials on television include the following:

In order to avoid any confusion on the part of the viewer, infomercials must be identified as follows:

- a) each production broadcast must be preceded and concluded with a clear and prominent written and oral announcement that the programming constitutes paid commercial programming; and
- b) a clear and prominent written announcement must also be made prior to each ordering opportunity indicating that the programming the viewer is watching constitutes paid commercial programming. The Commission will also expect licensees who air commercial messages that are 2 minutes or longer to adhere to this requirement concerning the identification of paid commercial programming.

#### **Positions of parties**

213. The Notice requested the views of interested parties on whether the Commission should develop a policy on the use of infomercials on radio.
214. The CAB agreed that radio infomercials should be identified with a prominent announcement that the programming in question constitutes paid commercial programming and stated that no formal policy should be required with respect to the nature, length or content of radio infomercials.
215. Friends stated: “The Commission should articulate a policy on radio infomercials akin to those in its television policy. In considering representations from commercial radio interests, the Commission should bear in mind that only its policy protects the listening public from abuse.”

#### **Commission’s analysis and determinations**

216. The Act requires that the programming originating by broadcasting undertakings should be of high standard and notes that both the CAB *Code of Ethics* and that of the Radio-Television News Directors Association of Canada contain provisions respecting the accuracy of information provided by broadcasters. In this spirit, the Commission considers that radio listeners should be informed when the airtime for longer advertising segments is, in fact, paid by an advertiser.
217. The Commission further notes that, from time to time, listeners have complained about infomercials on radio and pointed out that infomercials are often not identified on the air as paid advertising. The infomercial segments noted by the Commission are frequently related to real estate, car repairs, financial advice, travel, health and other topics.

218. **Accordingly, the Commission hereby advises the licensees of all commercial radio stations that advertising segments exceeding three minutes in duration must be identified as follows:**
- a. each production broadcast must be preceded by and concluded with a clear and prominent announcement that the programming constitutes a paid commercial segment; and**
  - b. such an announcement must be repeated prior to the resumption of the production following each break in the program.**

### **Conclusion**

219. The Commission considers that the measures announced in this policy, particularly its new approach for Canadian content development, will allow the commercial radio sector to contribute more effectively to the achievement of the goals set out the Act, while enabling it to operate effectively in an increasingly competitive environment for the delivery of audio programming.

Secretary General

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site:*

<http://www.crtc.gc.ca>

## Dissenting opinion of Commissioner Barbara Cram

I disagree with my colleagues in the majority both as to not increasing the amount of Canadian Content but also the increased funding to FACTOR.

I understand my colleague Commissioner Langford will be further addressing the issue of Canadian Content and therefore I will not dwell upon it. I can only state that if the Commission had accepted the argument of a lack of commercial demand for Canadian music as a reason for not increasing Canadian Content at the time of the original Radio Policy in the 1970's Canadian airwaves would have retained its Canadian Content of single digit proportions and Canada's music industry would not have become the second –albeit now third largest in the world.

Having first decided not to increase Canadian Content, my colleagues in the majority were then faced with a dilemma. They had given a concession to radio broadcasters, there had to be something given back to the broadcasting system in return. They deemed a 'national' vehicle was required and, by default, FACTOR was chosen as it is the only association that purports to be 'national' in relation to the English music industry.\*

In its intervention with respect to the public hearing held in Regina in October of this year, CIRPA supported FACTOR notwithstanding that they had 'governance challenges'. CIRPA claimed these 'governance challenges' are being addressed. However, based on my eight years with the Commission, these challenges have only gotten worse. Witness the following allocations from FACTOR over the years:

% of funding	2001-2002**	2004-2005***	2005-2006****	% of total Cdn pop'n 2002-2005
BC	24.3%	17.8%	15.8%	13.2%-13.2%
Alta	2.8%	1.6%	1.34%	9.9%-10%
Sask	1.3%	0.7%	0.24%	3.3%-3.1%
Man	1.7%	3.6%	3.6%	3.7%-3.6%
Ont	34.4%	48.7%	58.9%	38.2%-38.9%
PQ	20.8%	19.2%	14.9%	23.8%-23.5%
NS	10%	4.2%	3.2%	3%-2.9%

\* I do not purport to address MUSICACTION which receives 40% of the total funding from both the federal government and broadcasters. Obviously the majority of these monies would go both to Quebec and New Brunswick.

\*\* FACTOR 2001-2002 Annual Report

\*\*\* FACTOR 2004-2005 Annual Report

\*\*\*\* FACTOR's 2005-2006 Annual Report did not include a total provincial allocation table. This analysis is based on allocations to Sound Recordings, Video, Marketing/Promo, Touring/Showcasing and Marketing Grants consisting of a total of \$12,560,961 out of total loans/awards of \$14,024,651.

NB	1%	0.6%	0.07%	2.4%-2.3%
PEI	1.9%	1.4%	0.17%	0.4%-0.4%
NFLD	0.6%	0.6%	0.32%	1.7%-1.6%
YK and Terr	1.2%	1.5%	0.53%	0.3%-0.3%

Now whilst one cannot and should not expect complete regional or provincial parity, it is my belief that at least an effort should be made to move towards some semblance of parity but indeed it appears the numbers show exactly the opposite. FACTOR's monies come from the taxpayers of Canada in the approximate amount of \$10 million dollars per annum and also from radio broadcasters all across Canada. It is indeed ironic that the Commission has been licensing many more new radio stations in Alberta in the recent past than in any other area of the country. And yet the benefits allocated by those new broadcasting entities to FACTOR definitely do not remain in the province. The profits of these new radio stations come from Alberta, the profits pay for the benefit monies to FACTOR and the FACTOR monies go elsewhere.

I am unaware as to how FACTOR's 'governance challenges' are being addressed; however, to date these efforts are producing perverse results. At least in 2004-2005 FACTOR participated in information sessions outside of Ontario, with one of them being in France. In 2005-2006, FACTOR held five 'information panels' in Toronto.

FACTOR has in the past defended its uneven allocations saying it gives money only to the best. I cannot accept this premise given the Canadian Idol experience where Kalan Porter from Alberta rose to the top along with Theresa Sokyrka from Saskatchewan. I also cannot accept that the Maritimes does not have some of the 'best' given the strength of the East Coast Music Awards.

Alternatively, maybe FACTOR is correct in saying they give money only to the best. Bruce Cockburn, Rita McNeil, and many other well established artists have received support from FACTOR in recent years.

My colleagues in the majority are giving the broadcasting system's money to an organization over which the Commission has no control and which has 'governance challenges' which, to date, empirical data shows have not been resolved but exacerbated.

I would have increased the Canadian Content requirement. Respectfully, I believe the majority decision has given us the worst of both worlds.

## **Dissenting opinion of Commissioner Stuart Langford**

I disagree with my colleagues in the majority for a number of reasons. First, based on the evidence, their assessment of the future prospects for commercial radio in Canada are overly pessimistic. Second, their conclusions regarding appropriate Canadian content levels and support for emerging Canadian artists display a marked absence of imagination. Finally, their approach to Canadian talent development penalizes success, is unfairly weighted in favour of a national approach to the disadvantage of local initiatives and seems designed to produce more Canadian content for an industry unable or unwilling to broadcast most of what is already available.

### **Industry well-being**

Paragraphs 10 to 18 of the majority decision purport to assess the financial “health of the Canadian commercial radio industry.” The statistics provided are, one assumes, accurate. Where the majority goes wrong, however, is in treating all of them as equally pertinent. In my opinion, for the purposes of developing a new radio policy, emphasis must be placed on paragraphs 17 and 18.

Paragraph 17 reveals that business is not so good in AM radio land. There are exceptions, but so few exceptions that, to borrow a well known morsel of folk wisdom, they do little more than prove the rule. Paragraph 18, however, provides irrefutable evidence that all, financially, is very well indeed in the world of FM.

Still, the majority concludes in paragraph 31 that despite today’s rose colored skies, black clouds are forming just beyond the horizon and soon the deluge may come: “While the radio industry is currently healthy, it **is** (emphasis added) entering a period of uncertainty...” For the word “is” in the second half of the quotation above, I would substitute the words “may be”. Regulators should work with realities, in my opinion, not the unsubstantiated and self-serving projections of bottom line fixated industry representatives (paragraphs 29 & 30).

### **A shaky foundation**

The questionable conclusions in paragraph 31 form the shaky foundation upon which the majority builds its case for maintaining current Canadian content levels for popular music, putting off support for emerging artists until another day and refocusing the development of talent on content. Had the majority taken another approach, beginning with a recognition that AM and FM constitute two different worlds, it is my opinion that it could have constructed a far more imaginative policy structure on a far more solid foundation of fact, simply by maintaining the existing Canadian content rules for AM radio, and in recognition of its financial well-being, formulating a new FM-only policy that reflects the objectives listed in paragraph 2 of the majority decision.

## **Canadian content, emerging artists and talent development**

Imaginative is the absolute last word that springs to my mind when I review paragraphs 32 to 96 of the majority decision. In essence, with exceptions so minor as, in my opinion, to be practically inconsequential, the majority's view of an appropriate future approach to promoting Canadian content and talent appears to have been envisaged by looking in a rearview mirror. What they believe they saw there, though, is anyone's guess. Let's take a look.

Glancing back, I see an FM industry growing wealthy. Overall, meeting the 1999- 2006 requirement to air 35% Canadian content for category 2 popular music appears to have presented broadcasters with no hardship whatsoever. In the few instances where it did – for particular formats or stations competing directly with a myriad of U.S. signals, for example – exceptions could be and often were made. So easy has it been for the FM radio industry to meet the 35% level, that in the last six years dozens of applicants in competitive hearings across Canada have proposed launching new stations required by condition of licence (COL) to air more than 35% Canadian content in category 2.

The strategy worked. By my count, which may be understated (I might have missed a few) but is certainly not inflated, between 2000 and the middle of this year, 44 new FM stations were licensed which carried COLs requiring them to air more than the stipulated 35% Canadian popular music level. One new licence contains a 37% level, one is at 42%, a full 39 are at 40% and three agreed to and were licensed to provide a 45% level. These levels are telling. Even more telling is that they were voluntarily assumed by the applicants. It was not the Commission's idea, it was theirs.

So comfortable are FM operators with a 40% popular music COL that at the most recent competitive application hearing which began October 30, 2006 in Regina, eight of the 19 applicants for commercial licences in Saskatchewan and Alberta, proposed to accept a COL requiring them to meet a 40% level. Yet, in the face of these compelling facts, the majority has concluded that a new Radio Policy requiring anything above the old 35% level would present a hardship for broadcasters. Go figure.

### **Name that tune, again**

In my mind, even more confusing than the majority's apparent inability to recognize that the FM industry itself has set 40% as the new standard for popular Canadian music, is the fact that the majority has identified another problem, but done nothing about it. I refer to the sad fact that though broadcasters have adhered to the letter of the law requiring 35% or more, many have openly defied the spirit underlying it. They meet the 35% level but they do so by playing just a few marquee artists over and over again. That's great for big names like Shania Twain and Avril Lavigne, but not so good for lesser known performers.

The majority, judging by the language in paragraph 85, has thrown up its hands and declared that this problem defies remedy. One of the reasons it cites for keeping Canadian music levels at 35% is, “that an increase could lead to more repetition of the musical selections by Canadian artists that are already established.” That’s not solving a problem, it’s running away from it. Solving this problem and promoting Canadian talent, as the *Broadcasting Act* requires, means enshrining the 40% level most new licensees say they are comfortable with in a new FM policy, and requiring broadcasters to meet that level, not by spinning the same selections over and over but by providing as many Canadian artists as possible airtime on their stations. That’s what I would have done. That’s what the majority should have done. Instead, it has bowed to industry pressures and done nothing.

### **Chicken and egg conundrums**

The problem with moving to 40%, according to the Canadian Association of Broadcasters (CAB) is that, “listeners are not seeking more Canadian music.” In support of this view, the CAB provided sales figures revealing that during three monitored years (1998, 2000 and 2003) Canadian recordings accounted for only 16 or 17% of total sales in Canada.

In paragraph 84, the majority indicates that it finds this CAB argument persuasive: “The Commission is of the view that these sales figures do not indicate a level of demand that would support a further increase in the required levels of Canadian category 2 selections at this time.”

Apparently it never occurred to the majority to turn the problem around and look at it differently. In my opinion, the reason sales of Canadian CDs are so low is that in most instances buyers don’t know they exist. With most FM stations playing mostly U.S. artists with just a few big name Canadians featured over and over so as to meet the 35% content requirement, most Canadian artists are simply never aired. Who is going to buy a CD they’ve never heard by an artist they’ve never heard of?

### **Emerging artists**

Lack of imagination also appears to be the hallmark of the majority’s reaction to the plight of Canada’s new and emerging artists. Rather than solving the problem by requiring FM licensees to provide airplay opportunities for as many Canadian artists as possible, the majority has decided to duck the problem today and leave it to be solved on a case-by-case basis during future licence renewal processes. This is simply unacceptable.

To say to emerging artists that some day down the road things will improve is the regulatory equivalent of promising pie in the sky when you die. The Commission's case-by-case approach (paragraph 92) once more leaves most Canadian musical talent out of the new radio policy as they were left out of the old. The case-by-case approach will result, not in the establishment of a clear regulatory directive supporting these artists but in the equivalent of a crazy quilt policy made up of dozens, perhaps hundreds, of rulings, each more or less different than the last.

If flexibility is necessary, the better way is to set a standard and put the onus on licensees either to meet it or to apply to the Commission for a variation in light of their particular circumstances. Supporting new and emerging Canadian artists by playing their music should be the rule, not doing so, the exception. The majority has got it backwards. As to the sort of bonus or credit systems the CAB and other industry representatives suggested, I say no. With the right to exclusive use of valuable and scarce public property, a radio frequency, comes a duty to Canadians. Broadcasters should not have to be bribed to do their duty.

### **Talent development**

Finally, I come to the majority's new Canadian Talent development scheme. It is flawed from start to finish.

#### **What's in a name?**

First of all, the decision to replace the word "talent" with the word "content", though simply window dressing and, practically speaking, valueless, is incredibly ironic. The sad fact is that because airplay opportunities are almost non-existent, there is already too much Canadian "content" being produced. What is needed is more airplay for Canadian artists, not money to produce recordings that sit gathering dust somewhere.

#### **Don't dance, don't ask me**

Another small point: the majority's decision in paragraph 98 to prohibit support for visual arts exhibitions, theatre and dance is curious. Such initiatives never received much in the way of funding under the old Radio Policy, but the little they did get must have been welcome. I find it impossible to imagine what mischief the majority thinks it is curing in making this ruling.

Not all visual arts exhibitions feature paintings and sculptures hanging and standing alone in the hushed silence of a gallery. Many are multi-media in nature, containing performance components that include a musical element. Why should the musical artists who take part in such creative endeavors be deprived of support? And the last time I looked, dance and music were practically inseparable, as are music and many theatrical productions. Why cut off the few dollars that may spell the difference between an artistic endeavor living or dying? It seems short-sighted to me.

## Playing favorites

Now we come to the majority's views on where Canadian talent (henceforth "content") development money is best spent. Paragraph 108 recognizes that options exist, but the tenor of paragraphs 100 to 128 is that FACTOR and MUSICACTION are the Commission's beneficiaries of choice.

To ensure that they are amply funded, the new Radio Policy expands from one (transfers of ownership) to three (transfers of ownership, licence renewals and annual commitments) the occasions triggering CTD (now CCD) payments to favored recipients, i.e., FACTOR and MUSICACTION. From now on, in all three circumstances, a significant share of payments made must go to FACTOR and/or MUSICACTION:

1. They will continue to receive 2% of the value of the transaction when the ownership and control of a radio undertaking changes (paragraph 126).
2. They are guaranteed a significant annual income: "no less than 60% of the basic annual CCD contribution must be forwarded to Factor or MUSICACTION" (paragraph 118).
3. Applicants for new commercial radio licences who make CCD commitments over and above the basic annual level must direct "no less than 20%" of that amount to FACTOR and/or MUSICACTION (paragraph 124).

One wonders why. If there is one thing that eight years of sitting on radio licensing application panels has taught me, beyond the realization that, after 2000, a 40% Canadian popular music content level is what most FM radio operators saw and still see as logical, it is that FACTOR and MUSICACTION are not everyone's idea of ideal talent development organizations. Their national mandate too often turns out to be a Montréal, Toronto, Vancouver focus. "The regions," as the Maritimes, the prairies and the north so pointedly refer to themselves, do not appear to be major FACTOR and MUSICACTION concerns.

I am not opposed to increasing funding for talent development, though unlike the majority I do not regard such funding as a substitute for airplay. However, I am opposed to playing favorites. In my opinion, guaranteed funding is not a good idea. It can lead to complacency. If you are not required to prove yourself, you are less likely to work hard for the stakeholders who rely on you. I prefer a more market-reflective approach, where candidates for talent development subsidies are required to compete on a level playing field for available dollars.

## **Penalizing success**

Who gets the money is one issue. How each contribution is levied is quite another. The old system, described in paragraph 114 of the majority decision, was not perfect. What system is? However, it was laudable in one sense; it did not penalize success. The new system does. The concept reminds one more of the *Income Tax Act* than a policy designed to enhance musical talent.

I believe in a regulatory environment that encourages success. Until something demonstrably better can be developed, I would stick with the existing annual financial commitment system under which payments are based on a given market's potential to deliver profits. It isn't perfect, but it does recognize the fact that in any defined market it should be ability not governmental or regulatory policy that distinguishes the winners from the losers. The old system is not a clone of the *Income Tax Act* either, and that's a good thing.

## **Final Word**

To sum up, in my opinion the majority has squandered an opportunity to bring the 1998 Radio Policy into line with twenty-first century stakeholder expectations. Most successful recent applications for new FM licenses have declared themselves comfortable with a 40% or more category 2 Canadian content requirement. Most applicants for new licences over the past five years have preferred to direct the lion's share of CTD commitments to local rather than national (FACTOR and MUSICACTION) initiatives. Too few Canadian artists benefit from receiving exposure on conventional FM radio.

In light of these facts, I would have done things far differently than the majority. I would have distinguished between the financial realities facing AM and FM radio broadcasters. I would have reaffirmed the status quo for AM radio in Canada but made logical changes for FM. I would have taken my mandate as contained in The *Broadcasting Act* seriously and done considerably more for Canadian artists in terms of content requirements and support levels. The majority's decision to cave in to industry demands and virtually ignore the needs of Canadian artists is simply unacceptable.