



Broadcasting Regulatory Policy CRTC 2014-554

PDF version

Route reference: 2013-572

Additional reference: 2013-572-1

Ottawa, 28 October 2014

A targeted policy review of the commercial radio sector

The Commission has completed a review of certain aspects of its commercial radio policy to ensure that its approach is simple, effective and measurable. These radio policy updates will allow commercial radio to achieve the objectives of the Broadcasting Act and, ultimately, to better serve Canadians. Changes include the following:

- *A revised approach to calls for radio applications that will ensure that new radio stations are introduced in a transparent and efficient manner and do not compromise the ability of existing radio stations to serve their communities. The new approach will provide Canadians with an opportunity to express their views on introducing new radio services prior to a call being issued.*
- *A new process for low-power radio stations that will safeguard the integrity of the Commission's licensing process and ensure that low-power stations provide the service that they proposed in their applications. When licensees of low-power radio stations wish to increase the power of their stations to protected status, or to change conditions of licence related to their programming that fundamentally change the nature of the service they provide, they will have to apply for new licences.*
- *A flexible approach to introducing HD Radio technology in Canada that allows for innovation and experimentation. HD Radio technology permits a radio station to broadcast multiple digital audio signals in addition to the station's main signal and has the potential to increase the diversity of radio services that Canadians receive.*
- *New mechanisms to encourage radio stations to remain in compliance with their regulatory obligations and thus provide a high quality radio service to Canadians.*

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

Introduction

1. In Broadcasting Notice of Consultation 2013-572 (the Notice), the Commission called for comments on a targeted review of the commercial radio sector. The Commission noted that, since the last policy review in 2006, the commercial radio sector has remained relatively stable, both financially and in terms of tuning. The Commission therefore decided that a comprehensive review was not necessary at this time. However, it considered that the radio sector would benefit from an update of certain regulatory and policy elements to ensure that the regulatory framework is simple, effective and measurable and allows the commercial radio sector to achieve the objectives of the *Broadcasting Act* (the Act) and, ultimately, to better serve Canadians. Accordingly, in the Notice, the Commission sought comments on the following topics:
 - the Commission's approach to calls for applications;
 - the processing of applications for the conversion of low-power, unprotected stations to protected status;
 - the possible implementation of HD Radio technology in Canada and the need for a regulatory framework;
 - the possible adoption of new compliance mechanisms to encourage licensees to comply at all times with regulatory requirements and their conditions of licence;
 - an update of the provisions in the *Radio Regulations, 1986* (the Regulations) concerning reporting requirements and how licensees must maintain and submit their logs and records; and
 - the definitions for local and national time sales and the need for a definition of regional advertising.
2. The Commission received interventions from broadcasters, representatives of musical and cultural organizations and members of the public. The positions of parties who submitted interventions are discussed in the relevant sections of this regulatory policy. The public record for this proceeding is available on the Commission's website at www.crtc.gc.ca.
3. In the remainder of this document, the Commission addresses the issues identified for this review and sets out its findings.

Calls for applications

Background

4. When the Commission receives an application for a new radio station, it generally issues a call for applications so that other parties can apply as well. This serves to

ensure that the application that proposes the best possible service to the community is approved. However, in Public Notice 1999-111 and Broadcasting Public Notice 2006-159, the Commission recognized that a call for applications may not be beneficial in all instances and set out a number of exceptions where a call would not be necessary. The exceptions are as follows:

- proposals with very little or no commercial potential or impact, including some low-power applications;
 - proposals to provide the first commercial service in a market;
 - proposals by the sole commercial operator in a market to improve service to the market, either through an AM to FM conversion or a new station;
 - proposals to provide the first commercial service in the other official language in a market, or to convert the only station in the other official language from AM to FM; and
 - proposals to convert stations from AM to FM, in markets with two or fewer commercial operators.
5. In Broadcasting Public Notice 2006-159, the Commission set out a separate call process for applications to serve small markets (markets with a 12+ population of 250,000 or less) in light of the vulnerability of those markets.
6. The current policy on the issuance of calls includes a two-year pause: the Commission will not generally be disposed to accept applications for a commercial station in a specific market for a period of two years following the issuance of a decision approving a new service as a result of a call or where it has decided not to issue a call due to market capacity concerns.
7. In the Notice for this proceeding, the Commission asked for comments on the following issues:
- whether the exceptions for issuing radio calls and the two-year pause should be retained;
 - whether there should be a public consultation during the market assessment process;
 - whether the Commission should publish information from the application that triggered the market assessment process; and
 - whether the Commission should adopt a common approach to the call for applications process, irrespective of market size.

Positions of parties

8. A majority of interveners agreed that the current exceptions to the issuance of a call for radio applications and the two-year pause should be maintained. A few interveners, however, questioned the exception for applications proposing to offer a first commercial service, considering that the exception had been used as a means to circumvent the issuance of a call. Most interveners supported the proposal for a common approach to calls for all market sizes and to include a public consultation in the market assessment process and the adoption of a common approach to the issuance of a call, irrespective of market size.
9. The interveners were more divided on the information that should be published as part of the notice of consultation announcing receipt of an application and seeking comment on market capacity. Some interveners were in support of making the details of the original application public, while other parties suggested that only some details be published. The Canadian Association of Broadcasters (CAB) was of the view that only the applicant's name should be made public given the expenses incurred to prepare an application and the competitive disadvantage that could result from it being made public.

Commission's analysis and decisions

Exceptions to the issuance of a call for applications and the two-year pause

10. The Commission is of the view that the exceptions to the issuance of a call are a beneficial tool in helping streamline the process for dealing with certain types of applications with low market impact by removing, where appropriate, the requirement for such applications to be subject to a competitive process involving a call for applications. **Accordingly, the Commission retains the current exceptions, as set out in Broadcasting Public Notice 2006-159.**
11. **Additionally, the Commission will take into account the availability or scarcity of spectrum when considering applications proposing to use one of the last known frequencies in a market: those applications will not be eligible to be considered under one of the exceptions to the issuance of a call.**
12. Some interveners argued that the exception for first commercial service proposals is being used by some as a means of circumventing the issuance of a call. However, with respect to applications requesting to be considered under this exception, the Commission reviews all such applications and will, in circumstances where it is of the view that a first commercial service designation may not be appropriate, bring those applications to a public consultation prior to making a determination on whether the application meets the criteria for the exception. Further, the Commission may use its discretion to issue a call in all instances where it deems it appropriate to do so.

13. The Commission also considers that a two-year pause is still appropriate following the issuance of a decision approving a new service as a result of a call or, where it has decided not to issue a call due to market capacity concerns. Such an approach prevents over licensing in a market and provides a market with sufficient time to adjust to a new entrant. **Accordingly, the Commission retains the two-year pause.**

Public consultation during the market assessment process

14. Currently, the Commission does not formally consult the public when conducting the initial market assessment that could lead to the issuance of a call for applications. In the Notice, the Commission proposed to initiate a public consultation to seek comments on whether it should issue a call for radio applications in a given market. The Commission also asked whether the notice of consultation should contain information on the application, such as the name of the applicant and the type, nature and technical parameters of the proposed service.
15. The Commission considers that Canadians should have an opportunity to comment prior to a decision on a significant market development such as a call for applications, and that it would benefit from such information when conducting market assessments and deciding whether an application should trigger a call. The Commission is also of the view that disclosing some of the details of the application would be helpful for interveners and would increase the usefulness and relevance of the comments received.
16. **Therefore, upon receipt of an application that does not fall within one of the exceptions to the issuance of a call, the Commission will publish a notice of consultation and seek comment on market capacity and the appropriateness of issuing a call. The Commission will publish the following information in the notice of consultation: the applicant's name, the type of service proposed (commercial mainstream or specialty, community, campus, etc.), the technical parameters proposed (frequency band, broadcast power) and a sampling of the main communities included in the primary contour of the proposed station's coverage.**

A common approach to the call for applications process

17. Since the Commission issued Public Notice 1999-111 and Broadcasting Public Notice 2006-159, considerable licensing has occurred in Canada. This has led to a tighter competitive environment within the majority of Canadian radio markets.
18. In addition, the Commission has found that the call process for small markets set out in Broadcasting Public Notice 2006-159 is onerous and inefficient, results in significant delays in the processing of applications and does not take into account spectrum scarcity.
19. The Commission considers that, given the competitive reality facing the vast majority of markets, a common, efficient approach to calls for applications across all market sizes would be appropriate. The Commission is of the view that this can be

achieved by streamlining the call process outlined in Broadcasting Public Notice 2006-159.

20. Accordingly, the Commission adopts the following process, which applies generally to all markets, irrespective of size:
- The Commission assesses whether the application meets one of the exceptions to the issuance of a call set out in paragraph 4 above. If it does, no call for applications is issued and the application is published in a notice of consultation and considered on its own merits.
 - If the application does not meet any of the exceptions to the issuance of a call, the Commission issues a notice of consultation, indicating that it has received an application to serve a certain market and is seeking comments on market capacity and the appropriateness of issuing a call.
 - Following receipt of comments, the Commission conducts an assessment of the market's capacity to support an additional station, taking into account economic and financial data as well as the comments received in the public consultation.
 - Based on this assessment, the Commission weighs factors such as market capacity, spectrum availability or scarcity and interest in serving the market and then decides whether to:
 - 1) publish the application for consideration during the non-appearing phase of a public hearing (for example, in instances where there is capacity in the market, a number of frequencies of comparable quality (or coverage) are available or there is a low probability of other applications to serve the market);
 - 2) issue a call for applications (for example, in instances where there is capacity in the market, a limited number of frequencies available or a high probability of multiple applications to serve the market); or
 - 3) make a determination that the market cannot sustain additional stations, return the application and issue a decision setting out this determination.
21. Where an application—whether it is for a new radio station or a licence amendment to an existing service—is proposing to use the last known frequency in a market, the Commission will generally issue a call for applications if the market assessment indicates that there is capacity for an additional radio station.
22. As previously indicated, the Commission will not generally be disposed to accept applications for a commercial station in a specific market for a period of two years following the issuance of a decision approving a new service as a

result of a call or, where it has decided not to issue a call due to market capacity concerns.

Conversion of low-power stations to protected status

Background

23. Under the Commission's current approach a number of new low-power radio services are approved by the Commission without a competitive entry process to a given market. A low-power FM station is defined by the Department of Industry as a transmitter with an effective radiated power that does not exceed 50 watts in any direction, for which the 3 mV/m contour does not extend beyond 8 kilometres from the transmitting site, and where the maximum antenna height above average terrain is 60 metres.
24. If the licensee of a low-power station wishes to apply for protected status to improve its coverage, it must submit an application for a technical amendment (licence amendment) under Part 1 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*.
25. In the Notice, the Commission asked parties to comment on the benefits and risks of a process whereby the licensee of a low-power station operating on an unprotected frequency must apply for a new licence if it wished to operate its station on a protected frequency. The Commission also asked parties to comment on the appropriateness of exempting from licensing all types of commercial low-power stations in markets of all sizes.

Positions of parties

Requiring applications for a new licence

26. Most interveners supported a requirement for a licensee of a low-power station to apply for a new licence if it wished to operate the station on a protected frequency. Intervenors were of the view that such an approach would:
 - uphold the integrity of the Commission's licensing process;
 - enable applicants to compete on an equal footing;
 - create certainty about the use of a particular frequency; and
 - permit the Commission to determine the best use of radio frequencies, evaluate the technical aspects of proposals, and determine the capacity of the market to support another station operating on a protected frequency.
27. In their joint intervention, The National Campus and Community Radio Association, Alliance des radios communautaires du Canada, and Association des radiodiffuseurs communautaires du Québec (the community and campus radio associations)

suggested a different approach for campus and community stations. They suggested a system under which applications for a power increase of less than 200 watts would be treated as a technical amendment, not an application for a new licence. Stations would be required to operate at the new power level for a minimum of two years before any additional modification could be made.

Exemptions

28. Most interveners opposed the notion of exempting all types of low-power stations from licensing. They argued that exemption of all low-power stations could have unintended consequences such as the creation of many new low-power commercial stations that could ultimately have an adverse financial impact on existing licensed stations.
29. The Canadian Association of Ethnic Broadcasters was concerned that exempting low-power stations targeting ethnic communities could have a negative effect on incumbent licensed ethnic stations. Exempt low-power stations could target single ethnic communities while licensed ethnic stations must provide service to several ethnic communities. An exempt low-power station serving a single community could therefore severely undercut the revenues of a licensed ethnic station.

Commission's analysis and decisions

30. The Commission is of the view that requiring applications for new licences when licensees of low-power stations wish to move to protected status would serve to maintain the integrity of the Commission's licensing process. The Commission considers that the submission by the community and campus radio associations, which argued that all power increases of less than 200 watts should be treated as technical amendments regardless of whether the stations involved are low-power stations, does not address the basic issue of moving from low-power to protected status.
31. **Accordingly, licensees of low-power radio stations must apply for new licences when they wish to move from low-power to protected status.**
32. **Licensees of low-power stations will have to submit applications for new licences should they propose changes to conditions of licence related to their programming that fundamentally change the nature of the service that they provide.**
33. **Additional exemption orders for low-power stations will not be developed at this time.**

HD Radio technology

Background

34. HD Radio technology permits a radio station to broadcast multiple digital audio signals in addition to the rebroadcast of a station's analog signal and some enhanced features using the same 200 kHz FM channel. HD Radio technology thereby increases the number of audio distribution channels without requiring the use of additional spectrum bands. As the FM band has become highly congested in most major Canadian markets over the past several years, this technology could represent a way to address the issue of spectrum scarcity. HD Radio is not accessible with standard radio equipment and therefore depends on the availability of compatible radio receivers.
35. The radio industry has shown some interest in deploying HD Radio technology, and the Commission has granted temporary authorization to three radio stations to experiment with it.
36. In the Notice, the Commission posed a number of questions related to the potential of HD Radio, the impact of introducing it on a wide scale in Canada, as well as what would constitute an appropriate regulatory framework.

Positions of parties

Deploying HD Radio technology

37. No broadcaster that submitted comments set out plans to deploy HD Radio technology. Most who commented, including the CAB, l'Association des radios régionales francophones (ARRF), Bell Media Inc. (Bell Media) and Cogeco inc., on behalf of its subsidiary Cogeco diffusion inc. (Cogeco), expressed concerns about the feasibility of deploying this technology. They cited cost, possible increase of radio interference to adjacent stations, and the limited availability of compatible receivers.
38. Equipment and technology providers supported the deployment of HD Radio technology, citing the following benefits:
 - availability of a digital signal with enhanced audio quality;
 - a conversion to digital that would not disrupt the broadcasting system;
 - the availability of digital sub-channels, thereby providing additional programming; and
 - the ability to offer data services in addition to audio broadcasting.

Costs

39. The CAB projected that the capital investment costs to implement HD Radio technology would vary from between \$70,000 to \$700,000 per FM station. HD Radio is developed, owned and licensed by the U.S. Corporation iBiquity Digital Corporation (iBiquity). In addition to capital investment costs, stations using HD Radio technology must pay licensing fees to iBiquity.
40. iBiquity disputed the CAB's projected costs and estimated investment costs ranging, in U.S. dollars, from \$100,000 to \$150,000.

Technical issues

41. Several parties commented on interference issues between stations using HD Radio technology and adjacent, analog signals. Corus Entertainment Inc.'s experiment with HD Radio technology on CING-FM Burlington, Ontario (95.1 MHz) reportedly compromised the signal of CKGE-FM Oshawa, Ontario (94.9 MHz) as well as signals from Belleville, Ontario and Rochester, New York. iBiquity responded that such interference is extremely unusual.
42. Other technical issues mentioned included the greater power consumption required to offer HD Radio technology and the reduced range of reception for digital channels.

Availability of HD receivers

43. Parties generally considered that the availability of HD Radio receivers in Canada is limited, and that there is a lack of reliable data in this regard. iBiquity estimated that there are about 17.5 million HD Radio receivers in the commercial market, but did not have a clear estimate of the number of receivers in Canada.
44. The CAB submitted that 80% of the HD Radio receivers in Canada are in automobiles. iBiquity estimated that half a million vehicles used by Canadians are equipped with HD Radio receivers and predicted that this number would double by the end of 2014. The Nesbitt Report submitted by the CAB projected that full deployment of HD Radio receivers in Canadian vehicles will take 12 years, at a minimum.

Consumer demand

45. Most submissions indicated that consumer demand in Canada for HD Radio technology is low, primarily because few consumers are aware of it. Online research by the Canadian Broadcasting Corporation (CBC) revealed that only 5% of respondents were aware of HD Radio technology. iBiquity submitted that investment by broadcasters and authorization from the Commission to deploy the technology are necessary before higher levels of consumer awareness and demand can be achieved.

Potential to increase diversity

46. The sub-channels provided by HD Radio technology do not require additional radio spectrum but instead take advantage of multiplexing on existing FM channels. They thus provide opportunities to offer additional programming while maximizing the use of spectrum.
47. Some suggested that digital sub-channels, including those of large, successful stations providing mainstream formats, could be leased out for new entrants to the broadcasting system or to provide programming formats that increase the diversity of programming available to listeners.

Alternative digital radio technologies

48. Some parties identified alternative digital radio technologies, such as Digital Radio Mondiale (DRM), that might be used in Canada. However, the majority of responses addressing this matter considered that no digital radio technology is as promising and as feasible to deploy in Canada as HD Radio. That HD Radio is the digital standard in the U.S. was of great significance to several interveners. According to iBiquity, in the U.S. market, more than 2,200 AM and FM stations have adopted HD Radio technology. HD Radio stations operate in every state with over 1,475 multicast channels and over 2,670 digital simulcasts.

Regulatory approach

49. Parties were divided about the need to develop a licensing framework for HD Radio technology. Those opposed to licensing requirements included iBiquity, ARRF, Bell Media, and the CAB. They considered that such a framework could stifle experimentation and hinder further deployment of HD Radio technology in Canada.
50. However, cultural organizations, such as the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), the Société professionnelle des auteurs et compositeurs du Québec (SPACQ), the Canadian Council of Music Industry Associations, and the Canadian Independent Music Association (CIMA) considered that a licensing framework should be put in place to ensure that additional programming provided by HD Radio technology includes local programming, French-language programming, and Canadian content, and makes provision for contributions to Canadian content development (CCD).
51. Most opposed an approach to HD Radio technology similar to that which applies to Subsidiary Communication Multiplex Operation (SCMO) services.¹ They considered that the SCMO policy was inadequate for HD Radio due, among other things, to its dated nature and unsubstantiated effectiveness in achieving the objectives of the Act.

¹ See Public Notice 1989-23.

52. Most interveners suggested that the Commission's approach be characterized by flexibility, voluntary transition to digital broadcasting, and provision for continued experimentation.

Commission's analysis and decisions

53. **The Commission is of the view that it is too early to develop a policy for HD Radio technology given that it is still in its initial stages in Canada. The Commission will allow continued experimentation, voluntary participation in or transition to HD Radio technology, and will monitor developments and review its approach accordingly.**
54. **Licensees must inform the Commission in writing of any experimentation with HD Radio, or other digital radio technologies, that they undertake, including the type of service they provide.**

Compliance mechanisms

Background

55. The Commission monitors the compliance of radio stations with the Regulations and conditions of licence. These requirements ensure that the stations provide predominantly Canadian, high-quality service to their communities and that they abide by commitments made at the time of licensing.
56. As set out in Broadcasting Information Bulletin 2011-347, each instance of non-compliance by commercial radio stations is now evaluated in context and in light of factors such as the quantity, recurrence and severity of the non-compliance as well as the measures the licensee is taking to rectify the situation. As a result, the Commission generally treats non-compliance in a progressive manner. If the non-compliance is relatively minor, or is the first instance of non-compliance, measures generally focus on improving future performance and ensuring that the licensee understands that further action will be taken if improvements do not occur.
57. Currently, where a licensee is in, or appears to be in, non-compliance, the Commission may:
- renew the licence for a short term;
 - impose additional conditions of licence;
 - call the licensee to a public hearing to respond to and discuss apparent non-compliance;
 - following a public hearing, issue a mandatory order requiring the licensee to comply with regulatory requirements. Such orders are made orders of the Federal Court and can be enforced through contempt of court proceedings;

- suspend the licence;
- not renew the licence;
- revoke the licence.

58. In the Notice, the Commission called for comments on the appropriateness and effectiveness of adding the following measures and tools to assist and encourage licensees to comply with regulatory requirements and conditions of licence. These tools and measures would be applied in a manner that is commensurate with the severity and nature of the non-compliance:

- **Requirement to complete a licence renewal application checklist** that would be provided on the Commission's website as a tool for licensees and would be incorporated into the application process. The checklist would summarize all criteria evaluated during the licence renewal process, including all required elements. The application would not be processed until the checklist is complete.
- **Publishing annually on the Commission's website lists of stations operating in compliance and non-compliance.**
- **Requirement for licensees in non-compliance to file regular reports** that indicate improvements in areas of non-compliance. For example, for failing to submit annual returns, financial statements or CCD proof of payment on time, the licensee could be required to submit audited financial statements, annual summaries of all CCD contributions with proof of payment, etc.
- **Increasing the frequency of compliance monitoring.**
- **Limiting the number of minutes of advertising allowed per hour.**
- **Increasing regulatory requirements in cases of non-compliance.** The Commission could take measures to address the harm caused to the broadcasting system in cases of non-compliance with, for example, music programming requirements and CCD contributions.

59. In addition, the Commission invited parties to suggest other reasonable measures and tools related to non-compliance.

60. In the next section, the Commission will address each of the mechanisms proposed above.

Checklist

61. Most interveners agreed with the proposal to require licensees to complete a licence renewal application checklist. They were of the view that this would not require

much additional work, would help broadcasters complete their applications, and would make them aware of compliance requirements.

62. The Commission is of the view that a checklist would increase the level of convenience and awareness of licensees completing licence renewal applications by making necessary information available in one document.

63. Accordingly, the Commission will develop a licence renewal application checklist for radio licensees to complete as part of the licence renewal process.

Annual list of stations in compliance and non-compliance

64. Interveners who addressed this issue had differing views. Some agreed with the publication of annual lists, considering that this measure would:

- allow parties to obtain a certain amount of relevant information concerning non-compliance;
- represent a step forward with respect to transparency regarding CCD contributions; and
- be in the public interest.

65. Others considered that the publication of annual lists of stations in compliance and non-compliance would be inappropriate because it would embarrass broadcasters who are in non-compliance. They submitted that members of the public can find out about non-compliance through the Commission's notices of consultation and decisions.

66. The Commission is of the view that the publication of such lists could improve levels of compliance. Most broadcasters take the reputation of their businesses very seriously. It further notes that this measure is used and has proven to be effective for telemarketing compliance and enforcement.

67. Accordingly, the Commission will publish annual lists of radio stations in compliance and non-compliance with the Commission's regulations and their conditions of licence.

Filing of regular reports by licensees in non-compliance

68. Some interveners supported the filing of reports but suggested that filing requirements be limited to instances of serious non-compliance. They were also of the view that the reports should be publicly available. Others disagreed with this measure, considering that it would be ineffective and duplicate existing requirements.

69. The most frequent instances of non-compliance relate to the submission of annual returns and CCD contributions. Licensees must currently submit annual returns

which provide information about CCD contributions. The Commission therefore is of the view that reports by licensees in non-compliance would duplicate existing requirements and add to the administrative burden for both the Commission and the radio industry.

- 70. Accordingly, radio licensees in non-compliance will not be required to file regular reports beyond those already required.**

Increasing the frequency of compliance monitoring

71. Most interveners agreed with the proposal for increased monitoring. They were of the view that additional monitoring would provide them with an opportunity to take corrective action earlier in the licence term.
72. The Commission notes that its current approach already provides for an earlier verification of compliance through short-term licence renewals. The Commission is currently considering ways to improve its radio licence renewal process, including its approach to verifying compliance with programming, financial and ownership obligations.
- 73. Accordingly, the Commission will not increase the frequency of compliance monitoring at this time, but will consider it as part of possible improvements to its radio licence renewal process.**

Limiting the number of minutes of advertising allowed per hour

74. The Forum for Research and Policy in Communications (FRPC), the Ontario Association of Broadcasters (OAB) and the CAB disagreed with this proposal. The FRPC submitted that the ability to sell advertising is not linked to regulatory non-compliance. The OAB was of the view that it would make no sense to restrict a station's ability to earn income by reducing advertising inventory since the root cause of non-compliance might relate to financial issues. The CAB filed a legal opinion by Goodmans LLP arguing that such a measure would constitute administrative monetary penalties, which are not within the powers granted to the Commission under the Act.
75. The Commission considers that, instead of limiting advertising, it would be more appropriate to adopt an approach similar to that used by the Canadian Broadcast Standards Council (CBSC). Under the CBSC's approach, when a station is found in non-compliance, the broadcaster must announce the finding on the air.
- 76. Accordingly, the Commission intends to introduce a measure by which, in certain circumstances, stations found in non-compliance would announce that finding on the air. Such announcements would be required, by condition of licence, on a case-by-case basis and only in cases of serious non-compliance.**

Increased regulatory requirements for stations in non-compliance

77. Several interveners, including ADISQ, the community and campus radio associations, and the Public Industry Advocacy Centre (PIAC) agreed with the proposal for increased regulatory requirements. ADISQ considered that greater requirements for the broadcast of Canadian musical selections and French-language vocal music should be imposed on licensees in non-compliance. PIAC submitted that, where the Commission finds it appropriate to increase CCD contributions, it should ensure that these additional requirements are significant enough to deter further non-compliance. However, commercial broadcasters and their associations as well as the FRPC disagreed.
78. Under the Act, the Commission has the authority to impose measures through conditions of licence, orders or other steps such as short-term licence renewals to address harm caused to the Canadian broadcasting system by non-compliance. However, the Commission considers that such measures should be linked to the non-compliance in question and be proportionate to the seriousness of that non-compliance.
79. **Accordingly, the Commission considers that it is appropriate to add the following measures to deal with non-compliance related to programming and CCD contributions, to be applied, where appropriate, on a case-by-case basis:**

Additional CCD contributions: The Commission may require licensees to make additional CCD contributions that are over and above those required by the Regulations and by existing conditions of licence.

Removal of the ability to make CCD contributions to discretionary initiatives such as talent contests: In such cases, the Commission may require that all CCD contributions for the station be made to funds such as FACTOR, MUSICACTION or the Community Radio Fund of Canada.

Other approaches to non-compliance suggested by interveners

80. Cogeco submitted that the Commission should consider stations to be in compliance when their contributions to CCD are less than 1% below the required contribution. Cogeco also suggested that the Commission pre-approve any new CCD initiatives in order to ensure that they qualify. The Commission notes that it already affords some flexibility when measuring compliance with CCD requirements. With respect to pre-approval of initiatives, the Commission already provides this service on request. A number of broadcasters and other parties have requested and received the Commission's pre-approval of CCD initiatives. The Commission also has a [web page](#) dedicated to CCD that provides information on the initiatives that qualify.
81. CIMA submitted that the Commission should require that any outstanding CCD contributions be paid before the sale of a station. It also argued that the Commission should eliminate discretionary CCD initiatives and require that all CCD contributions be directed to music industry associations. The Commission already

reviews CCD contributions at the time of ownership changes and licence renewals to ensure that any shortfalls are made up. With respect to discretionary CCD initiatives, the Commission is of the view that the current CCD policy provides an appropriate balance between support to music industry associations and local discretionary initiatives.

82. Torres Media Ottawa Inc. submitted that stations in non-compliance should not be allowed to apply for a technical amendment or a new service. The Commission notes that Broadcasting Information Bulletin 2011-347 already restricts stations in non-compliance from obtaining licence amendments, depending on the seriousness and nature of the non-compliance. With respect to applying for new services, the Commission notes that some licensees own many stations. Ensuring that all stations are in compliance before a licensee is granted a licence for a new station would require extensive resources and might hinder the Commission in ensuring that the best application for another market is approved.
83. SPACQ proposed that the measures taken for non-compliance increase from licence suspension to licence revocation more quickly. The Commission is of the view that the compliance mechanisms set out above increase in severity in an appropriate manner and provide adequate measures for cases of serious and repeated non-compliance.
84. The community and campus radio associations were of the view that the Commission should establish online services or a suggestion box for licensees. The Commission already provides a single point of contact for smaller licensees and a client services group to provide information. The Commission is of the view that these services provide sufficient information for small licensees.

Regulatory provisions for maintaining logs and records

Background

85. In the Notice, the Commission proposed various changes to sections of the Regulations that deal with reporting requirements and how licensees maintain and submit logs, records and reports. The Commission uses this material to monitor the compliance of radio stations with their regulatory obligations and to deal with complaints from listeners.
86. The proposed changes were designed to replace outdated wording, ensure consistency among various sections of the Regulations, and add the most recent station self-assessment report as an appendix to the Regulations.

Positions of parties

87. Interveners raised concerns related to the amount of time that logs, records and audio recordings should be retained. The vast majority of interveners agreed that the amount of time required to retain program logs and audio content should be synchronized. However, the FRPC argued that the Commission should continue to require that licensees retain program logs for a year.
88. Most interveners agreed with the Commission's proposal that material be retained for eight weeks, but some submitted that a four-week retention period would be appropriate. These parties were concerned that keeping material for eight weeks would result in additional costs and argued that a four-week retention period would be adequate to deal with complaints or for the Commission to analyse programming.
89. The community and campus radio associations and Cogeco were concerned that changing the retention period to 60 days could result in additional copyright obligations for radio licensees. They noted that copyright tariffs generally permit radio stations to retain audio logs for copyrighted material for 30 days without being required to pay additional fees. If the retention period were changed to 60 days, they submitted that a corresponding change to applicable copyright tariffs would also be required for stations to comply without incurring additional costs.

Commission's analysis and decisions

90. The Commission is of the view that the current retention period is sufficient to permit the Commission to obtain audio recordings following the receipt of a complaint.
91. **Accordingly, for the purpose of consistency, the Commission will amend the Regulations to require the retention of program logs and audio recordings for four weeks following the date of broadcast. It will also amend the Regulations to incorporate the other changes related to logs and records and reporting requirements described in the Notice. A notice of consultation setting out the text of the proposed amendments to the Regulations will be issued for comment at a later date.**

Definitions of local, regional and national advertising

Background

92. Commercial FM stations in competitive markets must refrain from soliciting or accepting local advertising for broadcast during any broadcast week when less than one-third of the programming aired is local. This serves to ensure that such stations provide a strong service to their communities. Some stations are otherwise restricted in the type of advertising that they may broadcast.

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

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

94. In the Notice, the Commission asked parties if the definitions set out above are still appropriate and, if not, how they might be revised. The Commission further asked if it should develop a definition of regional advertising. If so, what factors should be considered in the definition and how could regional time sales be clearly differentiated from local and national time sales?

Positions of parties

Appropriateness of the current definitions

95. Most parties that commented on this issue supported retaining the current definitions on the grounds that they are well known and accepted by the industry. While acknowledging that there is sometimes debate about whether a particular advertisement is local or regional, they were of the view that there is no significant policy need to change the definitions.
96. For its part, the CAB considered that the current definitions are workable. However, it was of the view that the definition of national advertising, or time sales, could be clarified by requiring that a national advertisement originate from an advertiser with a retail presence in at least seven provinces. The CBC addressed the CAB's proposal in its reply comments. It submitted that the CAB proposal did not recognize the need for online retailers to advertise nationally and would essentially mean that online ads would be considered local ads under the CAB's proposal. The CBC also considered that the CAB's proposal does not address the fact that many companies have limited physical presence but have national and international reach.
97. The OAB and SoCast Inc. (SoCast) supported revising the current definitions. In general, these parties considered that the method of sale is not an appropriate means by which to categorize advertising revenues. SoCast proposed that the head office location of the advertiser be used to determine whether an advertisement qualifies as "local."

Need for a definition of regional advertising

98. Most parties that commented on this matter considered that there was no pressing policy need to define regional advertising. However, the OAB was of the view that a definition of regional advertising should be developed and that a regional advertisement could be considered an advertisement booked by an advertising representative or agency that is specific to a particular province, territory or region.

Commission's analysis and decisions

99. The current definitions of local and national advertising are well established and generally accepted by the industry. Consequently, changes to the existing definitions and defining regional advertising would represent a fundamental change to long-standing industry practice. As a result, the Commission is of view that such changes would be more appropriately addressed, if necessary, in a more extensive policy review to be conducted at a later time.
100. **The Commission will therefore maintain the current definitions of national and local advertising and will not introduce a definition of regional advertising at this time. It will continue to monitor issues involving advertising in the context of adherence to conditions of licence and will deal with complaints on a case-by-case basis.**

Other matters raised in submissions

101. The Notice stated that, while the Commission had identified specific issues to be addressed in this proceeding, it was nevertheless open to considering other issues and concerns related to the commercial radio sector and falling within its jurisdiction and powers under the Act.
102. Some interveners raised issues related to the level and quality of local programming, the levels of Canadian musical selections that radio stations must play, and the use of montages and the programming of French-language vocal music by French-language stations. The Commission considers that any changes to these key elements of its policy for radio require a more complete record. **It will therefore consider local programming, required levels of Canadian musical selections, and the use of montages and the programming of French-language vocal music by French-language stations as part of a more comprehensive policy review to be conducted at a later time.**

Emerging artists

103. ADISQ submitted that the Commission should require radio stations to devote an appropriate minimum percentage of musical selections to selections by emerging artists and establish a calculation mechanism to measure compliance with this requirement.

104. The Commission notes that it set out definitions of an emerging artist for both the French- and English-language markets in Broadcasting Regulatory Policy 2011-316 and also determined that it was not necessary to set requirements for musical selections by emerging artists. **Accordingly, the Commission does not consider that it is necessary to require specific minimum levels of musical selections by emerging artists that radio stations must play at this time.**

The MAPL system

105. To ensure that radio stations provide a high level of Canadian programming, they must broadcast Canadian musical selections as set out in the Regulations or their conditions of licence.

106. To qualify as Canadian, a musical selection must generally fulfil at least two of the following conditions:

- *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* (performance): 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.

107. ARRF, with support from Cogeco, submitted that the Commission should review the MAPL system to ensure that it remains a good method for identifying Canadian musical selections.

108. The Commission notes that no other broadcasters brought forward concerns about the MAPL system and that the broadcasting and recording industries are familiar with how it operates. **Accordingly, the Commission is of the view that the MAPL system should be maintained in its current form.**

Implementation

109. The revised policy on the issuance of calls for radio applications is effective immediately. The Commission will follow the process set out above for any new applications it receives and for any applications that have already been submitted to the Commission but have not yet been published.

110. The approach to licence amendments for low power stations will apply to any applications received following the date of this regulatory policy, and the approach regarding the implementation of HD Radio technology set out in this Regulatory Policy will come into effect immediately.

111. The approach to compliance mechanisms will be implemented beginning with the renewal process for licences that expire 31 August 2015. The Commission will issue an information bulletin at a later date related to compliance evaluation and enforcement.
112. The Commission will shortly issue a notice of consultation setting out proposed amendments to the Regulations reflecting the determinations set out in this Regulatory Policy with respect to maintaining logs and records.

Related documents

- *Call for comments on a targeted policy review for the commercial radio sector*, Broadcasting Notice of Consultation CRTC 2013-572, 30 October 2013
- *Revised approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2011-347, 26 May 2011
- *Definition of emerging Canadian artists on commercial radio*, Broadcasting Regulatory Policy CRTC 2011-316, 12 May 2011
- *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
- *The issuance of calls for radio applications*, Public Notice CRTC 1999-111, 8 July 1999
- *Services using the vertical blanking interval (television) or subsidiary communications multiplex operation (FM)*, Public Notice CRTC 1989-23, 23 March 1989

Secretary General

Appendix to Broadcasting Regulatory Policy CRTC 2014-554

Summary of determinations

Issuance of calls for radio applications

Exceptions to the issuance of a call for applications

Applications for new radio stations will generally result in the issuance of a call for applications with the following exceptions:

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

Applications proposing to use one of the last known frequencies in a market will not be eligible to be considered under one of the exceptions to the issuance of a call.

Commission process

This process applies generally to all markets, irrespective of size:

- The Commission assesses whether the application meets one of the exceptions to the issuance of a call. If it does, no call for applications is issued and the application is published in a notice of consultation and considered on its own merits.
- If the application does not meet any of the exceptions to the issuance of a call, the Commission issues a notice of consultation, indicating that it has received an application to serve a certain market and is seeking comments on market capacity and the appropriateness of issuing a call. The notice of consultation will include the following information on the application received: name of the applicant, type of service proposed (commercial mainstream or specialty, community, campus, etc.), technical parameters proposed (frequency band, broadcast power) and a sampling of the main communities included in the primary contour of the proposed station's coverage.

- Following receipt of comments, the Commission conducts an assessment of the market's capacity to support an additional station, taking into account economic and financial data as well as the comments received in the public consultation.
- Based on this assessment, the Commission weighs factors such as market capacity, spectrum availability or scarcity and interest in serving the market and then decides whether to:
 - 1) publish the application for consideration during the non-appearing phase of a public hearing (for example, in instances where there is capacity in the market, a number of frequencies of comparable quality (or coverage) are available or there is a low probability of other applications to serve the market);
 - 2) issue a call for applications (for example, in instances where there is capacity in the market, a limited number of frequencies available or a high probability of multiple applications to serve the market); or
 - 3) make a determination that the market cannot sustain additional stations, return the application and issue a decision setting out this determination.

Where an application—whether it is for a new radio station or a licence amendment to an existing service—is proposing to use the last known frequency in a market, the Commission will generally issue a call for applications if the market assessment indicates that there is capacity for an additional radio station.

Two-year pause

The Commission will not generally be disposed to accept applications for a commercial station in a specific market for a period of two years following the issuance of a decision approving a new service as a result of a call or, where it has decided not to issue a call due to market capacity concerns.

Low-power stations

Licensees of low-power radio stations will have to apply for new licences when they wish to move from low-power to protected status.

Licensees of low-power stations will have to submit applications for new licences should they propose changes to conditions of licence related to their programming that fundamentally change the nature of the service that they provide.

Additional exemption orders for low-power stations will not be developed at this time.

HD Radio technology

It is too early to develop a policy for HD Radio technology given that it is still in its initial stages in Canada. The Commission will allow continued experimentation,

voluntary participation in or transition to HD radio technology, and will monitor developments and review its approach accordingly.

Licensees must inform the Commission in writing of any experimentation with HD Radio, or other digital radio technologies, that they undertake, including the type of service they provide.

Compliance mechanisms

The Commission will develop a licence renewal application checklist for radio licensees to complete it as part of the licence renewal process.

The Commission will publish annual lists of radio stations in compliance and non-compliance with the Commission's regulations and their conditions of licence.

The Commission intends to introduce a measure by which, in certain circumstances, stations found in non-compliance would announce that finding on the air. Such announcements would be required by condition of licence, on a case-by-case basis, and only in cases of serious non-compliance.

The Commission considers that it is appropriate to add the following measures to deal with non-compliance related to programming and CCD contributions, to be applied, where appropriate, on a case-by-case basis:

Additional CCD contributions: The Commission may require licensees to make additional CCD contributions that are over and above those required by the *Radio Regulations, 1986* (the Regulations) and by existing conditions of licence.

Removal of the ability to make CCD contributions to discretionary initiatives such as talent contests: In such cases, the Commission may require that all CCD contributions for the station be made to funds such as FACTOR, MUSICACTION or the Community Radio Fund of Canada.

Regulatory provisions for maintaining logs and records

The Commission will amend the Regulations to require the retention of program logs or records and audio recordings for four weeks following the date of broadcast. It will also amend the Regulations to incorporate the other changes related to logs and records and reporting requirements described in the Notice of Consultation 2013-572. A notice of consultation setting out the text of the proposed amendments to the Regulations will be issued for comment at a later date.

Definitions of local, regional and national advertising

The Commission will maintain the current definitions of national and local advertising and not introduce a definition of regional advertising at this time.

Other matters

The Commission will consider local programming, required levels of Canadian musical selections, and the use of montages and the programming of French-language vocal music by French-language stations as part of a more comprehensive policy review to be conducted at a later time.

The Commission does not consider that it is necessary to require specific minimum levels of musical selections by emerging artists that radio stations must play at this time.

The Commission is of the view that the MAPL system should be maintained in its current form.