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Canadian Association of Broadcasters

L'Association canadienne des radiodiffuseurs

20 September, 2005

By hand and via e-mail

Mr. Charles Dalfen
Chairman
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

RE: Request for Deferral of the Commercial Radio Policy Review Proceeding

Dear Mr. Dalfen:

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private television and radio stations, networks and specialty, pay and pay-per-view television services.

2. The CAB notes that it is anticipated the Commission will shortly issue a Public Notice to begin the process of reviewing its commercial radio policy. It is the CAB's view that the circumstances of the radio industry and related sectors in the near future are such that discussions of the policy at this time are unlikely to lead to a successful resolution of the issues at hand. Moreover, the current policy continues to provide benefits to both the radio and music industries and in the CAB's view has not given rise to any critical issues in urgent need of immediate review.

3. Accordingly, the CAB hereby formally requests that the Commission defer the upcoming commercial radio policy review for the general and detailed reasons outlined below.

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Potential Impact of the Decisions on Ability to Address Major Issues of the Radio Review

4. In the CAB's view, there are four main issues that will be the subject of discussion when the Review is launched. These are:

   - How can the Policy encourage greater diversity in the exposure of Canadian English and French-language music?
   - How can the Policy encourage a successful transition of the industry to digital transmission?
   - How can the Policy encourage appropriate levels of local service in communities of different sizes across the country?
   - How can the Policy encourage new and creative approaches to the effective use of Canadian Talent Development funding?

<u>Transition to Digital Radio</u>

5. It has become clear in recent years that the rollout of digital radio in Canada has not been moving at the pace originally anticipated. This is not a Canadian problem; in fact every jurisdiction in the world, with the single exception of the United Kingdom, is experiencing serious problems in rolling out digital radio. The problem is the same everywhere – how to encourage consumers, and before them, consumer electronic manufacturers, retailers and automotive companies, to adopt the new receivers.

6. The fact is that the model for the manufacturing and adoption of consumer electronics has changed dramatically since the original policy was formed. No longer do manufacturers develop and promote new receivers simply because they offer new quality and functionality – it is now necessary for the providers of the new technology to aggressively promote it with the public, provide significant amounts of new content, and subsidize the manufacturer for each unit produced.

7. This new model is very difficult for over-the-air broadcasters, who have no subscription revenue stream to subsidize receivers. Consequently it is very difficult to persuade manufacturers to enter the marketplace with product that will receive the digital radio broadcasts provided currently by Canadian radio stations.

8. In radio, automotive manufacturers are particularly crucial to the rollout of new radios. Here, as in the USA and even in the UK, it has

been very difficult to persuade auto manufacturers to include digital radios in their models. In North America, this has become doubly difficult since the major automotive companies have a significant stake in the success of a competing technology – satellite radio. During the subscription radio hearings, it was made clear that they were not open to the provision of any other digital radio technology in their products.

9. At this particular time, during the launch of satellite radio in Canada, it is completely impossible for the radio industry to advise the Commission on what a renewed strategy for digital transition should be, or what impact a new strategy might have on the prospects of the commercial radio industry.

10. It is possible, though there is uncertainty here as well, that the terrestrial subscription radio licensee might have some role in a renewal of the Eureka-147 based technology strategy. Meanwhile, some broadcasters have shown interest in the U.S. IBOC technology, but it is far from clear that IBOC will provide the elements needed for a successful consumer launch and consequently a successful digital transition for commercial radio, since it suffers from the same commercial disadvantages as Eureka-147.

11. The CAB believes that within the next 24 months developments will occur that will provide the radio industry with a better picture of what to expect on the digital radio front. The next two holiday buying seasons will provide a clearer indication of the initial consumer adoption of digital radio technology. Will manufacturers group behind IBOC? Will new chipsets be designed that will open up new possibilities, and will manufacturers be open to such possibilities?

12. This holiday buying season will be crucial, as will the anticipated entry of new manufacturers into digital radio in the new year, and their success in the holiday buying season of 2006. Therefore a delay of the radio review for 24-36 months would allow the radio industry to identify the right path to propose a coherent and cohesive plan to ensure a successful digital transition for commercial radio. No such plan is possible at the current time – and yet, such a plan is integral to the success of commercial radio and the discussion of its appropriate contributions to public policy.

<u>Music Exhibition Quotas and diversity of music</u>

13. On June 16, 2005, the Commission issued new licences to satellite and terrestrial subscription radio undertakings in Broadcasting Decisions

CRTC 2005-246, 2005-247 and 2005-248 (the "Decisions"), and a licensing framework for satellite subscription radio undertakings in Broadcasting Public Notice CRTC 2005-61 (PN 2005-61).

14. Subsequently, five petitions were submitted to the Governor-in-Council requesting it set aside or refer back of one or more of the above-referenced Decisions. On September 9, 2005, the Government of Canada decided to uphold the Decisions that permit Canadian Satellite Radio (CSR) and SIRIUS Canada to operate satellite radio subscription services, and CHUM-Astral to operate a terrestrial subscription radio service.

15. With this decision rendered by the Governor-in-Council (GIC) it is now clear that licensed subscription radio services will be available across the country in the very near future. However, the satellite licensees must return to the Commission for new conditions of licence, and it is anticipated by the GIC that full public discussion will take place as those amendments to licences are considered.

16. For its part, the CAB has been working with its radio members to develop a bonus system that would be applicable to both the Canadian and the French vocal music exhibition quotas. This bonus system, which is still in its development stage, is designed to respond to the needs of both the music and radio industries by providing broadcasters with an incentive to increase the amount of new Canadian music and new Canadian artists played on commercial radio.

17. However, the CAB has not yet undertaken discussions with the music industry on its proposed bonus system, quite frankly because of the distraction of the appeal on the Decisions and the concerns the music industry has raised with these decisions. For example, the CAB notes that in a press release issued on September 13th, 2005, by the coalition of Québec's cultural organizations that opposed the satellite radio decisions, Yves-Francois Blanchette of ADISQ was quoted as saying:

"The requirements for adequate Canadian content and control, which are the foundations of the broadcasting system in Canada, have been completely waived for these (satellite radio) two companies. This opens the door for other broadcasters who will want to follow their lead."

18. Naturally, the music industry is concerned that the radio industry will wish to lower its commitments in order to be more competitive for listeners with the newly licensed subscription radio services. And indeed, there is concern from radio broadcasters on this issue.

19. In its last review of commercial radio, the Commission encouraged the CAB to continue to work with all sectors of the music industry to forge stronger partnerships in support of their mutual interests in ensuring a healthy supply of Canadian music and talent. The CAB notes that over the last seven years commercial radio has worked cooperatively with the music industry on a number of successful initiatives including the development of Radio Starmaker Fund/Fonds Radiostar, marketing and promotion funds funded solely by commercial radio, Canadian Radio Music Month and the Canadian Radio Music Awards.

20. However, despite the success of these cooperative initiatives, the CAB submits that, given the current climate, it would be preferable for there to be a cooling off period, following the very heated public discussion on subscription radio. Once the satellite services have launched in Canada, and we know more about their take-up and their impact in the United States, we will have a better idea of their potential impact in Canada, and it will be possible to give more balanced consideration to the needs of both the radio and music industries.

21. There is a clear desire on behalf of the private radio sector to ensure that the policy framework can assist a strong music industry, capable of creating the music that Canadian radio needs, without harming the competitive position of commercial radio. The CAB submits that the current environment, in which little is known about the competitive impact of widely varying Canadian content quotas, is not conducive to constructive discussions between the music industry and the radio sector on measures to help increase the diversity of Canadian music on commercial radio.

The CTD Policy

22. The discussion of creative methods to improve the effectiveness of CTD contributions is equally coloured by the current atmosphere of uncertainty. The CAB notes that following the approval of their applications, both subscription satellite radio services are required by condition of licence to support FACTOR and MusicAction. This will ensure that both FACTOR and MusicAction will receive each between $1.7 million and $1.9 million per year in additional funding over the next seven years. Radio Starmaker Fund and Fonds Radiostar are also stable for the near-term future. The CAB submits that there is therefore no urgency at this point to review the CTD policy.

23. In the longer term, the financial health of the organizations which receive CTD funds will likely benefit greatly from the subscription radio operations, if the projections presented to the CRTC are realized. Again, it is not known how this will play out.

24. Meanwhile, other aspects of the contribution that private radio makes to the music industry are also uncertain. The sector is still waiting for the Copyright Board decision on the SOCAN-NRCC request to increase their copyright tariff. Should the Copyright Board approve the two collectives' requests as proposed, the copyright payments of private radio would increase by up to 300 % by 2007 and these royalty payments would be retroactive to the year 2003. Further, private radio will most likely be faced with additional copyright payments should the new Bill C-60 tabled by Government be adopted. Indeed, Government has introduced a provision in its Bill to extend to performers the publishers' right for copyright payments on what is known as the transfer of medium or ephemeral tariff. This new tariff will create an additional copyright burden for radio broadcasters for the simple act of transferring a digital copy of a song to their hard drives.

25. In sum, the CAB submits that the organizations which benefit from CTD money are not currently in difficulties; that they may benefit greatly from the launch of subscription radio; and that the radio industry's overall contribution to music may undergo a radical increase due to upcoming decisions of the Copyright Board. Once again, the current environment is not conducive to discussing the methods by which radio's contribution may be made more effective in supporting the artists who make the music.

Local Programming

26. The CAB notes that commercial radio is competing with a plethora of other new content platforms for delivering music, including internet-based radio, portable personal music devices such as MP3 players and mobile phones and legal and illegal music downloading applications, to name but a few. Furthermore, the CAB submits that all of these platforms have contributed to fragmenting radio's audiences and, in the case of the internet, have also decreased the share of advertising dollars available to licensed programming undertakings. In fact, according to the CRTC's 2004 *Broadcasting Policy Monitoring Report*, internet advertising revenues in Canada increased by 34% in 2003 to $156 million. In 1999, only a little over $55 million was spent on internet advertising.

27. In addition to this unregulated competition, the newly licensed subscription services will compete directly with conventional private radio for the attention of Canadian listeners. Moreover, it is the CAB's view that subscription radio will have competitive advantages over commercial radio created in part by regulation.

28. In that context, the CAB strongly believes that commercial radio must have a regulatory environment that allows it to compete fairly for audiences in its own markets, if it is to be able to maintain its important contributions to the objectives of the *Broadcasting Act* (the Act), both in terms of quality local service provided to their communities and the support and promotion of Canadian music and talent development. The competitive disadvantages created for commercial radio must therefore be addressed in any future policy or regulatory process.

29. The CAB recognizes that it is too early at this point to be definitive about the degree of impact these new subscription services will have on commercial radio. In the case of subscription radio, the CAB believes that all local markets are likely to be impacted and that small market stations will be particularly vulnerable to this new competition, since the relative expansion of choice for their listeners will be huge. Markets which the Commission would regard as unable to sustain further commercial licensing will now find 200 new competitive options available to their listeners – albeit at a price.

30. As mentioned above, it is not possible at this time to know the degree of impact subscription radio technology will have on commercial radio. The CAB notes, however that according to a national survey conducted by Sirius, that in the United States satellite subscribers have reduced their commercial radio listening from 58% of their time to 7% of their time. They spend 83% of their listening time with Sirius. (The remaining time is split among CDs and other audio sources). These changes do not include any additional impact of regulatory advantages, since there are no content quotas in the US.

31. It is true that local content has always been the strength of commercial radio. It is also true that subscription radio services are not allowed to carry local programming on their Canadian channels. This is also true in the US, but it has not meant that commercial radio will not lose listening time to satellite radio, as noted in the Sirius survey. In fact, it is anticipated that all local commercial radio stations will be impacted by the new satellite radio services, particularly stations operating in small markets that cannot support a multitude of services.

32. Local commercial radio stations may respond to all this new competition by increasing their local programming to retain listeners. Even if effective, this strategy would most likely mean increases in programming costs without necessarily any increase in advertising revenue. On the other hand, broadcasters may be forced to respond to the loss of tuning and thus loss of revenue by reducing expenditures, which could impact on the quality or volume of their local programming content.

33. Given these uncertainties and potential disruption to the radio market, it would be premature for the private radio sector to propose new measures or commitments on local programming.

34. In the CAB's view, it will require at least 24 months (or two holiday buying seasons) before anyone can reasonably evaluate consumer adoption of subscription radio in Canada. During that same period, it will be possible to learn more about its impact on American commercial radio, and project from that information its future impact in Canada. At the same time, this period could be used to evaluate the Canadian and American digital radio strategies in the face of competing new technologies and allow the Canadian radio industry to come up with a coherent and cohesive plan for the digital radio transition.

35. A strong digital radio strategy is a fundamental building block for the future of commercial radio. Therefore, a coherent and cohesive plan for the digital radio transition is pivotal to any assessment of commercial radio's future contributions to the system and particularly local programming and Canadian music and talent development.

36. For these reasons, the CAB urges the Commission to delay the upcoming public proceeding to review the commercial radio policy until such time as the CRTC is in a position to fully assess the impact of subscription radio on the commercial radio sector, based on reasonable market indicators.

The Commercial Situation of the Radio Industry

37. The CAB notes that the current financial state of the commercial radio industry is good, due to a variety of factors, most notably a healthy Canadian economy, and some of the efficiencies made possible by the current radio policy.

38. It may be felt that the current health of the industry will allow it to withstand any competitive threats and still contribute more to public policy across the board. The CAB submits that this view must be tempered with an appreciation of both the cyclical nature of the economy and what we have learned from past experience about the impact of subscription based competition on local advertising revenue-dependent broadcasters.

39. Business cycles require no explanation. It should be noted however, that overall Canadian radio revenues track very closely with overall retail sales figures. While the radio industry is currently in the top of its business cycle, any disruption in the economy, any break in consumer confidence, will impact directly on radio revenues.

40. This in itself is not a reason for delay. However, the cyclical nature of the business, and where the industry currently resides in that cycle, must always be taken into account when policies are reviewed.

41. The disruptive impact of new technologies is another matter, however. The CAB recommendation that the Commission defer the Commercial Radio Policy Review process is also based on precedents where the introduction of new technology and new content platforms have had unintended or unforeseen negative impacts on the broadcasting system.

42. When the Commission last introduced new satellite technology – direct-to-home (DTH) satellite distribution – warnings were also offered about its impact on local conventional television stations. An examination of the evolution of DTH in Canada over the last 10 years makes it clear that in 1995 the manner and extent to which distant signal carriage would ultimately impact conventional television in Canada was not anticipated. Today, time shifting has become a powerful and widely used marketing tool for DTH – and now for cable – which has resulted in significant viewing to out-of-market stations, leading to huge losses in audience share for local stations. The CAB has filed numerous impact analyses with the Commission that support these findings.

43. Another example is the introduction of French-language specialty services back in the late 80's. In 1987 the Commission had licensed five (5) new French-language specialty services to provide more diversity of television choices in the Francophone market. At the time these new services were launched in the Fall of 1987, incumbent French-language conventional television stations, with the exception of TQS's Montreal station launched only the year before in 1986, were

profitable, and in fact Télé-Métropole's CFTM-TV Montreal was the most profitable television station in the country. Five years later, at the time of the licence renewal of all the private French-language television stations the situation had drastically changed for the worse. Indeed in Public Notice CRTC 1992-53 it is stated that:

The Commission noted an industry tendency towards retrenchment, centralization of operations and restraint, as indicated by a reluctance to make future commitments. The Commission recognizes that the poor financial results of the past years and the uncertain economic climate do not constitute a favorable context for a review of licence renewal applications. In these circumstances, the Commission has decided to renew most licences of the private television stations for a period of no more than 5 years to allow for an early review of the situation.

44. It should be pointed out that it took the TQS television group 15 years to reach the break-even point. It would be unjustified to blame all the financial problems of French-language conventional television stations on the introduction of new French-language specialty services. Nonetheless, it is indisputable that at the time, the licensing and introduction of new French-language specialty services significantly contributed to the financial difficulty of the Quebec conventional television sector.

45. These cases show that the introduction of new broadcasting technologies or different content platforms can have long-term altering effects on incumbents that go well beyond the scope of the initial forecasts.

<u>Conclusion</u>

46. In light of the recent subscription satellite radio decisions, the CAB strongly believes that commercial radio must have a regulatory environment that allows it to compete fairly for audiences in its own markets, if it is to be able to maintain its important contribution to the objective of the *Broadcasting Act* (the Act), both in terms of quality local service provided to their communities and the support and promotion of Canadian music and Canadian talent development. The CAB therefore submits that the future development of policy and regulatory measures affecting commercial radio broadcasting must, at a minimum, consider the kind of potential impacts of subscription radio on commercial radio and address them appropriately. At the same time, the CAB considers that it is too early to project the degree

of impact new subscription radio technology will have on commercial radio.

47. For the reasons outlined above, the CAB recommends that the Commission delay the upcoming public proceeding to review the commercial radio policy until such time as the Commission is in a position to assess the impact of subscription radio on the commercial radio sector, based on reasonable market indicators, and until such time that the industry is able to develop a coherent and cohesive plan for the digital radio transition.

48. The CAB urges the Commission to give swift and favorable consideration to this request.

Sincerely,

Glenn O'Farrell
President and CEO

cc: Diane Rhéaume – Secretary General
Michel Arpin – Vice-Chairperson, Broadcasting
Richard French – Vice-Chairperson, Telecommunications
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