



Canadian Association of Broadcasters
Association canadienne des radiodiffuseurs

January 23, 2008

Via Epass

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

Re: Broadcasting Notice of Public Hearing CRTC 2008-12: Review of English and French Language broadcasting services in English and French linguistic minority communities in Canada – Reply Argument and Response to Undertaking

1. The following are the Reply comments of the Canadian Association of Broadcasters (CAB) with respect to the above-noted proceeding.
2. These Reply comments address matters relating to those parties' who propose to mandate private broadcaster funding of the Community Radio fund, to set aside radio frequencies for community radio stations and who propose measures to increase regional reflection. The CAB submits that other broadcasting-related matters such as those relating to coverage of the 2010 Olympics and issues relating to service carriage will be addressed by CAB members as they deem necessary or appropriate.
3. These reply comments further contain the CAB's response to a request by Chairman Konrad Von Finkelstein for a linguistic profile of Canadians residing in a minority official language community who receive their television off air.

Community Radio

2. Several parties¹ to the above-referenced proceeding have recommended that the Commission reserve or set aside radio frequencies for the future launching of community radio stations in minority official language communities. These parties argue that such spectrum set asides are necessary to prepare for the development and possible establishment of community radio stations² and so that the Commission can fulfill its requirements under the *Broadcasting Act*.³
3. In response, the CAB notes that it would be misguided on the Commission's part to set aside radio frequencies. The CAB notes that the Commission's current licensing process is sufficient and has proven to be an effective method for granting community radio licenses. As noted by the Commission itself 12 community radio stations serving minority language communities have been licensed since 2001, some of which were licensed in a competitive licensing process along side proposals submitted for commercial radio stations. In the CAB's view, this demonstrates that the Commission's existing processes embody the necessary tools for granting a community radio license where one is warranted.
4. Contrary to the National Campus and Community Radio Association's assertions, spectrum set asides are not necessary or a requirement pursuant to the *Broadcasting Act*. The Act serves to protect the interest of all Canadians including majority and minority non-official language communities. Thus to suggest that the *Broadcasting Act* bestows a unique privilege on minority language communities would be a gross misinterpretation of the *Broadcasting Act*.
5. To those parties that argued that there are technological and financial barriers to starting a radio station on the internet, the CAB notes that these barriers are no greater than those that must be overcome to set up a traditional radio station. The CAB further notes that if internet penetration is greater in minority language communities and has the ability to transcend frequency scarcity in urban minority community, it represents a far more viable business platform than traditional radio. What's more, an internet website with streaming content has the ability to showcase local talent and host discussion on topic of local and regional interest. In short, if there is sufficient community interest to develop and sustain community reflection, the internet may be one of the most, if not the most flexible and economically efficient platform.
6. The CAB reiterates that the barriers to entry for any interested community radio station are relatively low provided they have a compelling case including the necessary community support and resources. The public interest is, however, not served by artificially supporting some radio stations at the expense of others.
7. More importantly, there are fundamental issues that arise as a result of reserving frequencies to achieve a particular *Broadcasting Act* objective. The most important of these is that of governance. The Commission, in the event frequencies were reserved would likely see a flood of applicants who would consider that they now have a sure thing. The Commission would then

¹ Assemblée de la francophonie de l'Ontario/Mouvement des intervenant.e.s. en communications radio de l'Ontario Alliance des radio communautaires du Canada, National Campus and Community Radio Association, Radio Communautaire Francophone d'Ottawa, Fédération des francophones de la Colombie-Britannique.

² Fédération des communautés francophones et acadienne du Canada.

³ National Campus and Community Radio Association, para 13 of their initial comments.

have to possibly decide between a myriad of groups which is the most deserving and most representative of a minority language community. Serving the public interest and public policy goals in such circumstances will be difficult and most likely very contentious. Other issues such as reporting on the use of public monies also arise and these will be expanded on later.

Community Radio Fund

8. In addition to seeking reserved radio frequencies, several interveners⁴ recommended that the Commission take specific measures to financially support community radio. While some parties merely indicated that community radio should be supported⁵, others specifically requested that 5% of the Canadian Content Development fund should be allocated to the Community Radio Fund of Canada. According to the National Campus and Community Radio Association, the 5% allocation would be a trial to “demonstrate its effectiveness that would come with no strings attached, the revenue would go to enabling stations utilize whatever new technologies are effective for their community.”⁶ The CAB further notes that while this may not be the consensus position among parties that advocated for additional funding, the CAB nevertheless notes that it is entirely inappropriate to request funding for new technology development from private broadcasters who themselves endeavor to fund such projects. Regardless, to the extent the Commission deems that the request for new technology funding has merit; it would be more appropriately addressed in the context of the new media proceeding.
9. The CAB also notes that the current CCD policy established the Community Radio Fund of Canada as an eligible third party for CCD funding to contribute to the creation of “Audio content initiatives that would further advance the fulfillment of specific objectives of the Canadian broadcasting system as outlined in the Act as a community radio fund, Native radio and other specialized audio broadcasting services dedicated to serving the particular needs and interest of children, Aboriginal Peoples, and persons with disabilities”.⁷ Accordingly, in order to comply with the CCD policy, voluntary contribution made by private broadcasters to the Community Radio Fund of Canada must have conditions in order to ensure that their financial contribution serve the purpose identified by the Commission regarding the eligibility of the Funds to receive CCD funding.
10. With respect to the specific amount of funding sought the CAB notes that at the public hearing NCCRA estimated that based on past Canadian Content Development (CCD) amounts, 5% of the total annual CCD fund would provide approximately \$1million to \$1.2 million to the Community Radio Fund of Canada. The CAB contends that the NCCRA’s estimate is based on a gross misunderstanding of the policies and regulations governing how private broadcasters contribute to the CCD resulting in a significant miscalculation of the expected benefits. The CAB notes that NCCR’s \$1-\$1.2 million estimate is based on Community Radio Fund of Canada receiving 5% of the total of the fund generated through annual CCD contributions, additional benefits flowing from new licenses awarded and the transfer of ownership of radio stations. To

⁴ Fédération culturelle canadienne française, Commissariat aux services en français (Ontario), Fédération des communautés francophones et acadienne, Société Franco-Manitobaine, Mouvement des intervenants en communication radio Ontario, Alliance des radio communautaires du Canada, Société Radio communautaire Victoria, National Campus and Community Radio Association, Alliance National de l'industrie musical

⁵ Société Franco-Manitobaine, Commissioner of Official Languages

⁶ Line 4125 Transcript Volume 3.

⁷ Par. 108, CRTC 2006-158, Commercial Radio Policy, 2006

illustrate this, the CAB notes that in broadcasting year 2007, the total amount flowing from the CCD different policies was \$23.5 million of which 5% represents \$1.2 million. It should, however, be pointed out that the 5% of CCD funding sought by the community radio sector could not be extracted for previously approved new licenses and transfer of ownership. Thus, this 5% could only be applied on amounts flowing from the mandatory basic annual CCD contribution.

11. According to the CAB's calculations, had the new CCD policy been in place in 2007, private radio broadcasters would have contributed approximately \$7.17 million. From this amount, 85% or \$6 million would have come from private music stations, of which 60% or \$3.6 million must be remitted under the Radio Regulations to FACTOR or MUSICACTION. The remaining \$3.5 million would be directed to other eligible CCD initiatives including voluntary contributions to the communities served by local radio stations. Accordingly, the amount that could be contributed under the current regulatory regime would be 5% of \$3.5 million which amounts to \$175,000.00 not the \$1 to 1.2 million advanced by the NCCRA.
12. The issue of funding also raises the issue of how the Commission would ensure an appropriate level of accountability in the manner in which these monies would be spent especially in a circumstance where public spectrum was reserved for such groups. No easy task when dealing with volunteers and the like. This becomes as noted earlier, another significant governance issue.
13. Moreover, private broadcasters have as a result of the Commission's new policies on CCD less flexibility on the community initiatives they may sponsor as part of their CCD obligations. As radio is a local medium, private radio broadcasters believe that these local initiatives are worthwhile programs that stimulate Canadian content that would never otherwise be funded. So in essence, what we would be doing is simply focusing on one *Broadcasting Act* priority at the expense of another equally important goal under the Act.
14. Finally, the CAB reiterates that the request for additional funding should be directed to those from whom the funding would be sourced not through the mandated measure. This means that the financing burden should be borne by government. Private broadcasters are already, on a voluntary basis, adding funds to the Community Radio Fund of Canada thus it is necessary to evaluate over a reasonable period of time, first the funding that is necessary to extend local reflection and second whether the amount required is in fact being contributed voluntarily by private broadcasters and role of other funding sources. As we noted at the hearing:

.... nous croyons qu'il est important que les responsables du fonds, les organismes qui soutiennent ce fonds-là, c'est-à-dire l'ARC du Canada, l'ARC du Québec et l'Association des radios campus communautaires du Canada, démarchent au près des diffuseurs et fassent valoir les mérites et la pertinence d'investir dans le Fonds plutôt que de recourir à une mesure réglementaire qui serait imposée aux radiodiffuseurs.

Longue histoire courte pour vous dire qu'avant d'envisager d'imposer des mesures réglementaires, il nous apparaît beaucoup plus pertinent de voir comment le Fonds va évoluer avec les années, comment le démarchage des organismes qui le soutiennent auprès des diffuseurs privés, comment tout cela va évoluer avant d'envisager de recourir à des mesures réglementaires.

La radio, vous le savez, est un média local et il est important que les stations de radio privées au pays, qui sont ancrées dans leur réalité locale, disposent d'une certaine flexibilité pour pouvoir continuer de soutenir des initiatives en développement de contenu canadien à l'échelle locale.

15. To conclude, the CAB notes that at the public hearing ARC du Canada acknowledged that they had held discussions with CAB members CTVglobemedia and Rogers and that according to ARC du Canada these members “know about the fund and they do what to work with us.”⁸ The CAB further notes Vice Chairperson, Commissioner Arpin’s invitation to ARC du Canada to consult with the CAB regarding the fund. The CAB welcomes the opportunity to meet with ARC du Canada and other organizations that promote this initiative to discuss in more detail the Community Radio Fund of Canada.

Measures to increase regional reflection

16. The third and final topic of interest to CAB members that received significant attention from interveners was the question of regional reflection and how best to achieve it given the constraints on all players in the broadcasting system. According to the Commissioner of official languages, as expressed in response to questioning from the Chairperson, TFO and community radio are the best tools that can be used to reflect the realities of persons living in a minority situation on the television screen or on the radio.⁹
17. The CAB does not take a position as to the services that should be carried whether on a mandatory or discretionary basis. With respect to capturing regional reflection, however the CAB is of the view that community television channels are uniquely positioned to broadcast the stories emanating from their respective communities. Community channels across the country received \$103 million in funding from cable BDUs. This means that community channels, available at the local level across the country, have the potential to provide a significant impact to the minority language communities that they represent. Thus, it represents an excellent vehicle to provide local reflection for minority language communities.
18. Absent the will to mandate community channel programming in minority language communities, the CAB notes that community websites are an as effective tool that permits the posting and sharing of user-generated content and stories that speak to the realities of each community. Indeed, this is an opportunity for the associations representing French-language Canadians residing in minority language communities to generate further cohesion within the community.
19. As noted above, the CAB does not take a position as to the services that should be carried whether on a mandatory or discretionary basis. Indeed, parties’ positions varied widely on this topic with some advocating for mandated carriage to services such as RDI, TV5, Vrak.TV,¹⁰ and others advocating for the discretionary carriage of a selection of French language services.

⁸ Line 3410, Transcript Volume 3.

⁹ Beginning at line 4909, Transcript Volume 4.

¹⁰ Conférence ministérielle sur la francophonie canadienne, Fédération culturelle canadienne française

20. What is clear from interveners' comments is that there is a demand, from within minority language communities, for access to additional broadcasting services. It is up to the Commission to determine the appropriate packaging to meet such demand. In this regard, the CAB notes that several parties¹¹ commented in the written submission phase that the pending revision to the BDU regulations relating to 10:1 distribution will in fact reduce the number of French language services currently being offered to Canadians living in minority language communities. It is for these reasons that the CAB reiterates its recommendation to the Commission contained on page 4 of its November 20, 2008 submission that existing services be grandfathered to preserve the already few services made available.
21. In summary, the CAB recommends that the Commission explore the feasibility of using community channels to extend regional reflection of Canadians residing in minority language communities and to look at the potential presented by new technologies such as the internet for assembling, reflecting and preserving minority language community stories.

CAB Recommendations

22. In addition to the recommendations provided above, and for the ease of the Commission's reference, the CAB reiterates its initial recommendations filed November 20, 2008.
- existing Canadian services must not be removed to make room for minority language services;
 - Canadian minority language services must have priority over non-Canadian, exempt and non-programming services;
 - French-language specialty programming services should be offered in a single package on a discretionary basis, by BDUs operating in English language markets;
 - no minority language service should be subject to mandatory stand-alone distribution without its consent, but an *à-la-carte* where there is a written affiliation agreement offering could be one of the distribution options available to consumers;
 - any changes to the distribution of a Canadian programming service should be governed by clear rules regarding notification.
 - Notwithstanding the Commission's determinations in paragraph 86 of *Regulatory Frameworks for Broadcasting Distribution Undertakings and discretionary programming services*, Broadcasting Public Notice CRTC 2008-100 requiring licensed terrestrial BDUs to distribute one minority-language Category A or B service for every ten majority language services distributed, the CAB recommends that French language services currently being distributed be granted a grandfathered status.
 - Extension of high-speed and broadband internet access across Canada.

Response to Undertaking

23. During the CAB panel's appearance at the oral hearing, Chairman, Konrad von Finckenstein noted that certain parties such as CBC and CTV had provided estimates of the number of Canadians residing in minority language communities who receive their television off air. Specifically, Chairman asked "[a]s an Association of Broadcasters, do you have a better handle

¹¹ Association des Enseignants Franco-Ontarien, TFO.

on this? Do you have any idea about (a) the number of people who receive their television over the air and, secondly, the linguistic profile of those?”¹²

24. In response to the inquiry CAB panel representative Charlotte Bell noted that while the number of over the air customers was available, their linguistic profile was not readily available. The CAB panel agreed to undertake to provide the record the linguistic breakdown of Canadians residing in minority language communities that receive their television over the air.
25. After reviewing the data available, the CAB has determined that it is not in a position to estimate with a sufficient degree of accuracy the linguistic profile of Canadians living in minority language communities that receive their television over the air. Although the BBM TV Meter Data Book data for the 2007-2008 broadcast year¹³ informs us that approximately nine percent of Canadians continue to receive their television over the air, this data presumes that Francophones living outside of Quebec only tune to the Radio Canada for their French language services and do not subscribe to French language specialty services to retain their French cultural identity.
26. Without the more exact data elements, such as the postal codes of all official minority language households, the postal codes of customers of French language pay and specialty services¹⁴ outside of Quebec and the postal codes of the customers of English language pay and specialty service inside Quebec, any estimate would be speculative at best.
27. The CAB notes that BBM meter panel data can be obtained for a fee from BBM Analytics. The CRTC can specifically request that the data cross reference TV reception preference with the panel respondents' linguistic profile.

Conclusion

28. As has been made evident on the record of the current proceeding, the francophone population, outside of Québec, is spread disparately across a vast geographic region. The distribution of services to these populations is economically challenging for private broadcasters to achieve most particularly for over-the air French language radio or television services in markets outside of Quebec. There are nevertheless opportunities for CAB members to have their French and English language content consumed by Canadians residing in minority language communities using new technologies. These represent valuable opportunities for members.
29. CAB members have object strongly to the recommendations for reserved radio frequencies and mandatory funding. In addition to the many arguments noted above, the CAB notes that the public interest is served by neither.
30. With respect to capturing regional reflection, the CAB notes that community television channels are uniquely positioned to broadcast the stories emanating from their respective communities. In addition, community websites are just as effective tools reflecting the realities and stories of members of a minority language community through the posting and sharing of user-generated content. The CAB believes there is an opportunity for the associations representing French-

¹² As captured in line 1293 of Volume 1 of the transcript.

¹³ TV Reception types by province – table setting out off-air penetration.

¹⁴ whether via cable or satellite.

language Canadians residing in minority language communities to generate further cohesion within the community

31. The CAB thanks the Commission for the opportunity to present its position and looks forward to reading the Commission's report and recommendations.

Sincerely,

Original signed by:

Pierre-Louis Smith
Vice-President, Policy and Chief Regulatory Officer

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