



Canadian Association of Broadcasters
Association canadienne des radiodiffuseurs

February 1, 2010

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 Consultation 2009-418 – *Review of campus and community radio (BNC 2009-418)***

1. In these reply comments, the CAB responds to certain proposals and recommendations made at the public hearing held before the Commission the week of January 18-21, 2010 in conjunction with the proceeding initiated pursuant to Broadcasting Notice of Consultation 2009-418 (hereinafter “BNC 2009-418”). The CAB’s reply comments will focus on responding to proposals regarding mandatory funding of the campus and community sector by private broadcasters as well as the role of campus and community radio stations in the Canadian broadcasting system.

Mandatory funding and cross-subsidy of the elements is not envisioned in the Broadcasting Act

2. In their oral presentation, NCCRA/Arc du Canada and Arc du Québec stated that:

« *Le système de radiodiffusion canadien repose sur trois composantes essentielles. L’élément public, l’élément commercial et l’élément communautaire* »¹.

« *Tous se doivent de jouer un rôle complémentaire et ce, afin de répondre au droit de chaque citoyen canadien d’avoir accès à des contenus canadiens diversifiés, pertinents et de qualité. Il est donc, selon nous, du devoir de toutes les parties prenantes de s’assurer que chaque élément du système de radiodiffusion soit en mesure de pleinement jouer son rôle.* »² » (emphasis added)

3. In response, the CAB notes that although private broadcasters fully endorse the notion of diversity and the provision of complementary programming between the elements of the Canadian broadcasting system as set out in the Broadcasting Act, private broadcasters do not

¹ Line 771 Transcript Volume 1.

² *Ibid*, Line 772.

accept the proposition made by various community broadcasters that in order to achieve this objective, private radio broadcasters should be mandated to fund the community radio sector.

4. Other interveners have suggested that the obligation to fund campus and community radio stems from commercial broadcasters' use of the public airways. For example,

*the commercial sectors use of public airwaves gives them the responsibility to give back to the system*³

*Considering that private broadcasters have long enjoyed profiting on public property, we feel commercial radio is obligated to financially support our sector. The radio airwaves are public property and community radio is, with all due respect to the CBC, public radio in the truest and most literal sense.*⁴

5. In CAB's view, there are no provisions in the *Broadcasting Act* that compel private broadcasters to fund the provision of diversity of programming services in the system, namely, in this case, to provide stable funding to the community radio sector. The proposed funding becomes considerably more problematic, from a policy standpoint, when one considers the competitive impact on private broadcasters of funding their competitors in small markets across the country.
6. Paragraph 3(1)(b) of the *Broadcasting Act* states that the Canadian broadcasting system is comprised of "public, private and community elements" (emphasis added). Paragraph (e) goes on to set out their obligations: "each element of the broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming". The public element is addressed by reference to the contributions of the "national public broadcaster, the CBC, in paragraphs (l), (m) and (n). As for the private element, paragraph (s) states that "private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them, contribute significantly to the creation and presentation of Canadian programming".
7. The above provisions regarding the contributions of "each" element contemplate specific, distinct, and stand-alone circumstances and obligations. While each element is clearly an important part of the overall broadcasting system, and its contribution may, in its distinct way, be essential to that overall system, it is clear that the provisions of section 3 of the Act do not stipulate that any of the elements must support one another. Rather the support that they are mandated to provide is towards the creation and presentation of Canadian programming. To suggest that the elements must "cross-subsidize" each other would be tantamount to creating new formal regulatory relationships that are clearly not contemplated under the *Broadcasting Act*. If such regulatory relationships were considered from the language contained in the *Broadcasting Act*, then private broadcasters would have cause to seek subsidization from the public broadcaster and vice versa.
8. The *Broadcasting Act* must be interpreted as compelling contributions towards Canadian content in the form of programming rather than towards stakeholders at least not among the stakeholder "elements." In this regard, private broadcasters provide the vast majority of contributions to the creation of Canadian content including musical content.

³ Line 4326 Transcript Volume 3 Vancouver Co-Operative Radio.

⁴ Line 6018 Transcript Volume 4 CJAM Manitoba.

9. Moreover, private broadcasters are required to make annual contributions to Canadian content development (CCD). The majority of these contributions are remitted to national organizations that subsidize the creation of musical content that is then made available to all three elements of the system.
10. For its part, the community element is exempt from having to make CCD contributions. Instead, the community sector is expected to make contributions towards community expression including ethnic and third language expression and discovering emerging talent.
11. Given that private radio broadcasters are already the largest financial contributors in the radio sector to the creation of Canadian content of which the vast majority supports the creation of Canadian musical content, we believe that CCD contributions to the Community Radio Fund of Canada should continue to be made on a voluntary basis. As noted above, the CAB considers that the Act envisions the funding of Canadian programming content, not the various stakeholders, by private broadcasters.
12. The CAB also considers that paragraph 3(1)(e) compels the community “element” of the system to “contribute to the creation and presentation of Canadian broadcasting.” Contributing to the creation and presentation must be interpreted as placing a positive obligation on the participants in this sector to find their own source of funding, including from the community they serve in order to create and present Canadian content.
13. Accordingly, the CAB respectfully submits that the Act does not mandate a cross-subsidization between the three distinct elements (namely the public, private and community elements) that comprise the Canadian broadcasting system. Private broadcasters already fulfill their obligations toward Canadian programming and expression. If they choose to assist community expression, such contributions should remain voluntary and not be mandated by any Commission policy or regulation.

CMF and LPIF are not appropriate precedents to justify mandating private radio to fund the CRFC

14. The community radio associations also argue that the Commission has already created the regulatory precedents that would justify mandating private radio to subsidize the community radio sector through the Community Radio Fund of Canada (CRFC). In an exchange with commissioner Patrone, Mr. Kevin Mathews of NCCRA stated:

The creation of the Canada Television Fund...and the Local Programming Improvement Fund are good examples of places where the CRTC understood that revenues of the sector had to be redistributed so that it would meet its objectives.

And that doesn't necessarily have to be done at the pleasure of private broadcasters. The CRTC does have this oversight role.

15. The CAB considers that there are fundamental differences between the circumstances that lead to the creation of the Canadian Television Fund (CTF) and the Local Programming Improvement Fund (LPIF), and the present circumstances.
16. The CTF was created in order to enable cable BDUs to continue to pass through to their basic subscribers' a portion of the capital cost required to improve their distribution systems and to adapt them to the digital world. In return for this benefit, the Commission required BDUs to direct a portion of their annual revenues to the CTF (now the CMF).
17. Although some cable BDUs contribute to Canadian content through contributions to their community channels, not all distributors fund such a channel and in any event, broadcasters' contributions to Canadian expression far exceed those of the distribution sector.
18. Accordingly, in order to ensure that the distribution sector contributes appropriately to the creation of Canadian programming as is required under paragraph 3(1)(e) of the Broadcasting Act, the Commission mandated the funding of Canadian programming through the creation of the CMF.
19. Moreover, since its inception, the CMF provides funding mainly to independent producers (not broadcasters) for the provision of high quality Canadian television programming to be aired on Canadian OTA television services or Canadian specialty and pay programming services. Therefore, broadcasters are not the direct beneficiaries of these monies.
20. For its part, the local programming improvement fund (LPIF) was created for the benefit of smaller market local conventional television broadcasters (i.e. markets under 1 million) in order to ensure that these stations maintain a meaningful local reflection. In creating a BDU sector requirement to fund the LPIF, the Commission recognized that part of the problems faced by smaller market television service providers was the result of increased viewing fragmentation resulting from the viewing choices offered by BDUs.
21. There is a fundamental difference between the requirement imposed on BDUs to fund the LPIF and the CMF and the funding sought from private radio broadcasters to assist the community radio sector activities. BDUs do not compete directly with Canadian programming services whereas community radio competes for audiences and advertising dollars with private radio.
22. Moreover, the CAB notes that the Commission's 2008 Financial Summary for community based stations (all stations) demonstrates that as a sector, these stations had in 2008 a positive PBIT margin of 8.1%. In markets over 1 million the PBIT margin is 16.6% and in markets less than 1 million the PBIT margin is 3.9%. Accordingly, the financial evidence on the public does not support the proposition that this sector is in a financial crisis. What it demonstrates is that stations in smaller markets are significantly less profitable than counterparts in larger markets. The same holds true for private broadcasters.
23. Finally, the CAB notes that in some markets, particularly in Quebec, campus and community radio stations can exert a significant competitive pressure in the market and act as an alternative to private radio stations. In fact, private radio has been forced out of the market in at least one

circumstance in New Brunswick due to the success of a community station⁵. It is simply unfair to require private radio broadcasters, who themselves are facing significant economic pressures, to subsidize their competitors.

24. The Commission has never required private broadcasters to subsidize their competitors. We believe to do so would create a dangerous precedent and would not be in the public interest. More importantly, mandatory subsidies would remove any impetus private radio broadcasters would have to pursue current partnerships or assistance such as technical support and the donation of equipment or preferred lease rates on broadcaster towers.

Private radio broadcaster discretionary funding should remain at their discretion

25. The CAB reiterates its strong opposition to the suggestion made by the Commission to mandate annual contributions to the CRFC from the discretionary portion of the CCD contributions that private radio broadcasters are required to make. The many worthy and deserving local and national eligible CCD initiatives funded by private radio are fundamental to developing relationships with the local communities that we serve.
26. The CAB notes that there may have been some confusion in relation to its argument that the funding of community radio by private radio would have a floodgates effect since other organizations would also seek stable and predictable funding. The CAB fully understands that the Commission's role is restricted to fulfilling the objectives of the *Broadcasting Act*. Our concern is not that community or not-for-profit organizations such as the Cancer Society would request support because such organizations are not eligible CCD recipients. Rather our concern is that the many other eligible CCD recipients will apply to the Commission for mandatory stable funding.
27. In addition, our concern relates to the amount of funding requested by the CRFC. As the CRFC itself stated, in its own submission the funding it seeks is only a preliminary level of funding and that in 2-3 years time, it will request a review of the initial amount granted. One can only assume they will seek more monies since they have openly acknowledged that the portion of contributions sought from private radio does not come even close to fulfilling what they consider is necessary to support community radio.
28. Our floodgates argument relates solely to other organizations that are currently eligible CCD recipients such as The Songwriters' Association of Canada, la Société pour la promotion de la relève musicale de l'espace francophone (SOPREF) or Canadian Music Week ou Les rencontres de l'ADISQ.
29. The Commission set out very clearly in its Commercial Radio Policy 2006 (Broadcasting Public Notice CRTC 2006-158), which entities would be considered eligible CCD recipients.
30. Within the policy contemplated by the Commission, there are at least 66 different organizations that qualify for receiving CCD funding through private radio's CCD discretionary envelope. For

⁵ Line 2035 Transcript Volume 2.

ease of references, we have appended as Appendix 2 the non exhaustive list of eligible Canadian Content development parties and initiatives as established by the Commission and published on its web site.

31. Further, as recognized by the Commission itself, there have been requests in the past by eligible third parties for CCD funding to get the Commission to approve mandatory funding of their organizations by private radio. For example, the Commission noted in Public Notice 2006-158 at paragraph 72 to 74 that:

A coalition composed of nine provincial and territorial Music Industry Associations (the MLAs) from the Yukon Territory, British Columbia, Alberta, Saskatchewan, Manitoba, Northern Ontario, Nova Scotia, New Brunswick, and Newfoundland and Labrador was concerned with new and emerging artists as well as the lack of variety on station playlists. The MLAs argued that the music industry is best placed to develop Canadian talent, and that contributions should be directed to organisations whose mandates specifically reflect the development of the music industry. The MLAs were of the view that the majority of contributions should go to FACTOR/MUSICACTION and the Radio Starmaker Fund and Fonds Radiostar, with the rest going to regional grassroots development undertaken by the provincial and territorial MLAs. (emphasis added)

The MLAs recommended that the minimum requirement for CTD funding at the time of ownership transfers be raised from 6% to 10%, with 1% dedicated to the MLAs, yielding \$2 million per year. Some other parties also suggested that the minimum requirement in the case of ownership transfers be increased to 10%. (emphasis added)

Other proposals related to CTD funding came from the National Campus and Community Radio Association (NCRA) in conjunction with ARC du Canada and ARC du Québec. These parties requested \$5 million to aid in the development of community broadcasting. La Fondation Radio Enfants requested \$500,000 for a fund dedicated to the development of young radio talent. Aboriginal Voices Radio Inc. (AVR) proposed that the CTD policy be modified to allow CTD funding to be directed to support AVR or any native broadcaster featuring music and spoken word programming that is predominantly and distinctively Aboriginal. Such funds would be used for the development, operations and expansion of the Canadian native radio broadcasting infrastructure. The Centre for Research-Action on Race Relations (CRARR) recommended that a portion of CTD funds be earmarked or allocated to diverse talent and program development. (emphasis added)

32. In light of this, the CAB strongly believes that mandating private radio to fund the CRFC either by increasing the quantum of CCD contribution or by redirecting a portion of private radio's discretionary contribution would create a dangerous precedent that will be used by third parties from the list of eligible initiatives. Which begs the question: where would this end?
33. Equally, there is nothing on the public record that would clearly articulate how funding would be disbursed. Principles of good governance are essential when it comes to disbursing monies that are targeted to achieve public policy goals. What region of Canada or what language or operation would be favoured? What accountability measures would be instituted to ensure objectives of diversity and public participation are achieved? How does a community demonstrate need and obtain different levels of funding? These are just some of the important and essential questions to be answered before any funding structure could be established. The public record is simply devoid of this crucial information.

34. We also note that the Commission recognized the importance of providing private radio flexibility to identify the best use of a portion, albeit diminished, of their CCD expenditures when it stated at paragraph 99 of Public Notice 2006-158 that:

CCD initiatives by broadcasters are important at the local, regional and national levels. In reflecting the circumstances of their local communities, local initiatives by broadcasters can provide an important first step in the discovery and showcasing of new artists. Not-for-profit MLAs, operating in most regions, foster new and emerging talent. They do valuable work with those very early in their careers, providing various forms of support, information, communication, education, as well as business and market development services. These also support artists as they develop their professional careers.

35. Private radio broadcasters place a great value on the important and worthwhile local, regional and national CCD initiatives funded through the discretionary portion of their annual CCD contributions, new licences and tangible benefits flowing from transfer of ownership. Most importantly, they value the discretionary portion of their CCD contributions as an essential tool for connecting locally with the communities which they serve. From Astral's contribution to the City of Pembroke Music Festival, to Corus' continued support to Jazz Winnipeg, CHUM Radio's funding provided to the Waterloo Region District School Board for purchase of new instruments and sheet music, to Larche Communications' funding support to the annual Mariposa Folk Festival and RNC Media-Antenne 6 bursary program to support students from the journalism program of Collège de Jonquière, private radio are providing significant support at the local level through their CCD initiatives.
36. At the regional and national level, organizations or initiatives that receive funding include The Western Canada Music Award and Les Rencontres de l'ADISQ (Astral), Music Industry association and North by Northeast (Corus), The Music Education Program of the Canadian Academy of Recording Arts and Sciences and FANFEST at Canadian Music Week (CHUM radio).
37. We believe that mandating broadcasters to re-direct discretionary CCD monies to the CRFC would have a very detrimental effect on many groups and projects at the local, regional and national level which have benefited from these monies. In some cases, recipients would see the level of support from broadcasters significantly decrease or disappear altogether. Such an outcome would not, in our view, serve the public interest. In the worst case scenario, these organizations would also feel compelled to seek mandatory funding like the community radio sector.
38. Finally on this issue we note that discretionary CCD support has provided tangible and generally increasing level of funding to the different categories of eligible third parties for CCD funding, as illustrated by the table below:

Table – Private Radio’s CCD discretionary contribution (in \$000 - 2003-2004 to 2007-2008)

	2003-04	2004-05	2005-06	2006-07	2007-08	% change from 2003/04 to 2007-08
Music organization	1,050	1,000	3,737	1,610	4,863	463%
Performing Arts	2,181	2,963	4,388	4,543	5,088	233%
School & Scholarship	774	831	998	1,229	453	n/a
Total	4,005	4,794	9,123	7,382	10,404	259%

Source: CRTC Communications Monitoring Report, 2009

39. This demonstrates that the current voluntary method is working very well in providing financial support to a broad range of eligible initiatives.
40. It is therefore premature to assume that the current voluntary method of contributing to the CRFC is not working. The CRFC has been in operation for only a year and already it has received more than \$2.4 million in commitment for funding by private broadcasters. As the CRFC establishes a track record, it will gather more attention from broadcasters in the same way that FACTOR and MusicAction had to generate over a number of years broad and voluntary, support from large and small private radio undertakings.
41. Accordingly, MusicAction and FACTOR received funding on a voluntary basis for many years and established a clear track record of success before their funding became mandatory. With all due respect to its excellent work and worthy mandate, the CRFC has established neither a pattern of success nor established credibility which warrants support via mandatory funding.
42. For all the foregoing reasons, the CAB opposes the request made by the community radio sector that private broadcasters be mandated to provide funding to campus and community radio. We reiterate that, should the Commission require a mandatory annual contribution to the CRFC, such a contribution must not be taken from the portion of private radio stations’ annual CCD funding directed towards local eligible initiatives but rather, should be taken from the portion of the annual CCD contribution mandated to be directed towards national eligible initiatives.

Other forms of assistance can be made available

43. In its oral presentation to the Commission, the CAB emphasized the many other areas where it can provide assistance to the campus and community sector. The CAB recommended, *inter alia*, that the Commission expand the definition of an eligible CCD contribution to capture the many in-kind and non-tangible contributions that private broadcasters currently make. These types of contribution may include a donation of equipment, the granting of space on a transmitter or payment for a technical specification brief. Each of these services amount to a net benefit to the campus and community stations that receive them and should be recognized as such.
44. The CAB further recommends that the Commission provide the CRFC with more flexibility in terms of where they may direct their funds. Additional flexibility may allow the CRFC to

develop “capacity building kits”, in order to help campus and community stations to train volunteers or raise funds or apply for charitable status.

45. Lastly, the CAB recommends that the Commission encourage campus and communities stations to seek charitable status. For ease of reference, the CAB is appending to its submission a brief outline of the steps that these stations must take to gain charitable status. See Appendix 3.
46. We note that several campus and community stations have achieved charitable status. Stations such as, CFRH-FM in Penetanguishene, CKCU the Carleton University radio station, CIUT, University of Toronto station and CIBL the Montreal community radio station. This makes four stations that are known to have charitable status, suggesting that the exercise, while difficult, is not impossible.
47. Another area where private broadcasters could assist the campus and community sector is by establishing a “community radio liaison officer” within each of their respective companies. The identification of a single point of contact for all questions related to notification or otherwise could assist in the communication between the private and community radio sector. The CAB has also proposed to formalize the relationship between private and community radio through the establishment of bi-annual meetings. The details of the CAB proposal can be found in its response to undertaking.
48. Finally, the CAB continues to believe that the engagement of the Canadian government is essential. The CRFC was originally envisioned as an organization that would be primarily funded by the Government. This engagement could be financial or information assistance. Nevertheless, the Commission may wish to recommend that heritage undertake an initiative in this regard.

Spectrum Issues

49. Private broadcasters do not support frequency reservations. Instead, private broadcasters continue to believe that applications should be assessed on their merits including, as suggested in the CKUA submission, whether the application has the support of the community it is intended to serve.
50. Given the increasing scarcity of FM spectrum and issues related to this congestion, we recommend that the Commission consider the use of AM frequencies or Internet radio stations for campus and community radio as viable alternatives.
51. As explained by the CAB panel members Chris Gordon and Wayne Stacey, AM frequencies for example can be viable alternatives for stations that serve small markets or limited coverage area within larger markets. There are technical ways of putting an economic AM facility together using a modest transmitter and a single radiator antenna located on a small plot of land or a building roof tops. While these facilities may not have the coverage of larger commercial AM stations that use large transmitters and multiple-tower antenna arrays, they are perfectly capable of serving contained areas.

52. Several presenters that appeared before the Commission after the CAB, however, disagreed with the CAB noting that neither AM or Internet being were viable alternatives.⁶⁷⁸⁹
53. To be clear, the CAB is not recommending that campus and community stations that are currently on the FM band should “take a step backwards” and be moved to the AM band. Rather the Commission should consider the use of the AM band or internet for new campus or community radio station applications that seek to serve a spectrum-congested market.
54. Also, as noted by the CAB in its presentation to the CRTC, opportunities to “shoehorn” in new frequencies should only be done through negotiated changes to Industry Canada’s technical rules and only where the benefits are available to all band users. Further, establishing special technical rules for one category of licensee, based strictly on the type of programming content carried would amount to poor spectrum management and bad public policy.
55. With respect to the use of the AM band, the CAB notes many AM band radio stations are streamed and available on the Internet making them just as accessible and mobile as streams from FM stations or other audio services that are currently available on mobile phones, Ipods and laptop computers or Netbooks.
56. With respect to the use of the Internet, the CAB notes the question at the hearing of Commissioner Simpson to Adam Fox of CJAM¹⁰ regarding the role of the Internet in campus radio. Mr. Fox made it very clear that campus radio stations should have a web portal in order to reach their audiences.
57. With respect to the request made by campus and community groups to reserve frequencies for campus and community stations, the CAB disagrees strongly with such a policy measure. The suggestion that an FM frequency should always be “held” for a campus or community station fails to acknowledge that a community a) may never have sufficient interest to launch a campus or community station; b) or it may have sudden competitive interest from both a campus and community applicant or even competing campus and community applicants and only one frequency available; and c) it ignores other possibilities such as other technologies becoming viable options such as the use of the L band spectrum (provided it remains available for digital radio) and the use of Channels 5 and 6. Further, it ignores alternatives such as carriage on cable and DTH audio-only channels, the Internet or the AM band.
58. It is evident that the AM band and the Internet are viable options since certain community radio groups advocated this option for secondary school radio stations.
59. For all the foregoing reasons, the CAB submits that the Commission should reject the recommendation that Industry Canada set aside or reserve frequencies in markets for community radio.

⁶ Line 5927 Transcript Volume 4.

⁷ *Ibid*, Line 5928.

⁸ Line 3578 of Transcript Volume 3

⁹ *Ibid* 3579.

¹⁰ Line 6097 of Transcript Volume 3

Conclusion

60. The CAB appreciates the opportunity to provide the foregoing reply comments. The CAB and its members ask the Commission to be mindful of the many financial obligations that currently befall private radio broadcasters as well as the economic context within which this proceeding is taking place.

Sincerely,

Originally signed by:

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

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APPENDIX 1

Broadcasting Notice of Consultation 2009-418

CAB Response to Undertakings

Undertaking # 1

At line 1583 of Transcript Volume 2, Commissioner Lamarre asked the CAB panel whether private broadcasters had an official relationship with the NCRA and ARC. At line 1602 of the same transcript Commissioner Lamarre asked whether the CAB was willing to have a more official relationship with associations representing campus and community radio stations.

CRTC legal staff summarized the undertaking at line 2052 with the request that the CAB provide more details on how the CAB proposes to formalize its relationship with the community sector.

CAB Response:

The CAB proposes to have formal meetings twice a year with representatives of NCCRA, ARC du Canada and ARC du Québec to exchange on the needs of the not-for-profit radio sector and identify areas where private broadcasters can provide assistance. In the absence of a CAB convention, the CAB also proposes to facilitate meetings between its members and interested representatives of the campus and community radio associations that, to the extent feasible, could be held coincident with provincial or regional broadcast association's annual convention, such as WAB and BCAB. The CAB proposes that the primary objective of these meetings should be to encourage relationship building and dialoguing with respect to the needs of the campus and community sector and the abilities of private broadcasters to meet the needs of campus and community stations or provide them mutually-beneficial assistance.

CAB members could also nominate a "community radio liaison officer" who could serve as a "go to" person within the individual member companies. The names of said individuals could be available from the CRTC or as posted on the individual company websites.

Undertaking # 2

At line 2021 of Transcript Volume 2, Commissioner Lamarre noted the following : au paragraphe 53 vous dites que le Canada est le seul pays où les radios privées subventionnent l'industrie domestique de la musique. At line 2022, Commissioner Lamarre asked: Pourriez-vous, s'il vous plaît, nous citer vos sources?

CAB Response:

The CAB's source is its own research and analysis. This research and analysis was originally undertaken in the context of the 2006 Radio Review proceeding and updated for the proceeding initiated by BNC 2009-418.

APPENDIX 1

Broadcasting Notice of Consultation 2009-418

CAB Response to Undertakings

Undertaking # 3

At line 2023 of Transcript Volume 2 Au paragraphe 57, vous parlez des subventions provinciales auxquelles les radios communautaires ont accès.

CAB Response:

In paragraph 57 of its October 16, 2009 submission, the CAB stated:

“The CAB further notes that the community radio sector also has access to provincial government funding programs that financially support community radio activities.”

The CAB was referring to the provincial programs available in Quebec and New Brunswick. In Quebec both French and English Language community stations qualify for funding support and a 4 % portion of the advertising budget of the provincial government. In New Brunswick, stations can obtain support from certain ministries and in some regions the provincial government will purchase advertising in order to further certain language policies. This information has been confirmed by representatives of the community radio sector in the context of this proceeding.

Undertaking # 4

At line 2023, Commissioner Lamarre further requested the following:

Pourriez-vous, s'il vous plaît, nous donner vos précisions et au paragraphe 11... non, à la page 11 de votre présentation vous avez mentionné que la radio communautaire avait affirmé qu'ils essayaient d'être plus compétitifs. 2024 Pourriez-vous s'il vous plaît, aussi, citer le passage du mémoire en question?

CAB Response

At page 11 of its oral presentation, the CAB stated the following:

Par ailleurs, nous sommes préoccupés par la recommandation provenant de ce secteur à l'effet d'assouplir le cadre réglementaire applicable à la radio communautaire, et je cite, « afin de lui permettre d'être plus compétitif. »

This is in reference to the statement made in the joint filing of ARC du Canada and ARC du Quebec and the NCRA wherein they noted at paragraph 49:

“Community/ campus broadcasters have a mission to fulfill and must face stringent regulatory exigencies. On the other hand commercial radio, with which we must compete for audience and advertising, does not face the same exigencies. Furthermore, based on sound principles of fairness, it would be legitimate to modernize the framework of community radio and render it more flexible. This should also take into account the evolution of the radio environment and the changes which have occurred within the last decade...in order to improve our competitive stand.”(emphasis added)

APPENDIX 1

Broadcasting Notice of Consultation 2009-418

CAB Response to Undertakings

Undertaking # 5

At line 2043 of Transcript Volume 2, Commissioner Patrone asked the following:

... do you see any scenario in which any future commitment of corporate support for certain community stations in certain markets might be acceptable or palatable in exchange for meeting certain requirements, including going commercial free broadcasting higher rates of Canadian content or eventual migration of the FM band?

CAB Response

The CAB firmly opposes any suggestion that it be mandated to contribute to the campus and community radio whether directly or through the diversion of funds from private radio's discretionary CCD contributions. The CAB's position against mandatory funding is non-malleable.

Indeed the concessions cited by the Commission "in exchange for corporate support" do not necessarily benefit private radio broadcasters. While requiring campus and community radio stations to "go commercial free" may in theory be appealing, it in fact may remove more revenue from them than what they may otherwise expect to receive from "mandatory corporate support".

Second, incenting campus and community radio stations to increase their rate of Canadian content is the role of the Commission or government not of private radio broadcasters. Finally, private radio broadcasters do not believe that campus and community radio stations should be obligated to migrate en masse from the FM band. Rather, we are of the view that alternative solutions should be considered where few viable FM frequencies are available as is often the case in larger urban areas.

Finally, the CAB respectfully notes that in response to a similar question from Commissioner Patrone, the representative from the National Campus and Community Radio Association, Kevin Mathews stated the following:

"... Going commercial free means foregoing a revenue stream; migrating to the web means foregoing two revenues streams because neither advertisers nor individuals in the community seem to be as willing to donate money to underwrite an online signal and increasing Cancon just means increasing programming costs."

For all the foregoing reasons, the CAB respectfully opposes mandated tradeoffs.

CAB APPENDIX 2

Broadcasting Notice of Consultation 2009-418

Overview: Seeking Status as a Registered Charity in Canada

This information is intended to be an overview of the procedural steps required to achieve status as a registered charity in Canada. It is not legal advice. The assistance of a lawyer is recommended.

1. Application for Status as a Registered Charity

If the corporation is established and operated for charitable purposes, it may register with the Canada Revenue Agency (CRA) as a charity.

To qualify for registration, an organization must be established and operated for charitable purposes, and it must devote its resources to charitable activities. An organization also has to meet a public benefit test. To qualify under this test, an organization must show that:

- its activities and purposes provide a tangible benefit to the public; and
- those people who are eligible for benefits are either the public as a whole, or a significant section of it, in that they are not a restricted group or one where members share a private connection, such as social clubs or professional associations with specific membership.

An organization will not qualify for charitable status if:

- any part of its income is payable or otherwise available to personally benefit any proprietor, member, shareholder, trustee or settlor of the organization
- it is set up to provide tax relief for private acts of benevolence (e.g. to cover expenses for a single identified individual)
- if it is for political purposes (e.g. furthering the aims of a political party)
- it undertakes illegal activities

Information on, and the application form (Form T2050) for, charitable registration can be found on the CRA [website](#).

The application requires information about the organizational structure, governing documents, financial planning/budget, political activities and the individuals involved. Essential to the application is an explanation of the charitable purpose(s) of the organization and the specific activities undertaken by the organization to achieve those purposes.

2. Additional information

a. Incorporation

To register as a charity, the organization has to be either incorporated or governed by a legal document called a trust or a constitution. This document has to explain the organization's purposes and structure.

CAB APPENDIX 2

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Incorporated organizations that seek to be registered as a charity should ensure that the Act, or the section of the Act, under which they are incorporated, is suitable for a non-profit organization. Some provincial incorporating documents, or incorporation guidelines with respect to incorporation, produce results that disqualify the organization from being registered as a charity. Specifically, the incorporating statutes in the provinces of Alberta, Saskatchewan, Manitoba and Quebec may present some challenges to seeking status as a registered charity. For organizations incorporated in those provinces, more information is available in the CRA Guide to Registering a Charity for Income Tax Purposes.¹

b. Timing

CRA officials estimate that it takes approximately 7 months from the time the application is completed for an organization to be assigned an officer to review and begin work on processing the application. Depending on extent of any changes, it can take, on average, 12 months to complete the process. This is in addition to the time required to compile and prepare the application.

¹ For more information, see the CRA [Guide to Registering a Charity for Income Tax Purposes](#), and the incorporating laws of the provinces in question.

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Examples of eligible Canadian Content Development (CCD) parties and initiatives by category as described in CRTC Public Notice 2006-158, Commercial Radio Policy (the Policy)¹

The following are **examples** of initiatives grouped by the categories used in the definition. **This is not an exhaustive list.**

1. National, provincial, and territorial music industry associations (MIAs):

Alberta Recording Industry Association (ARIA)
Canadian Country Music Association (CCMA)
Gospel Music Association of Canada (GMA Canada)
Saskatchewan Recording Industry Association (SRIA)
Manitoba Audio Recording Industry Association (MARIA)
Music and Film in Motion (MFM)
Music BC
Music/Musique New Brunswick (MNB)
Music Nova Scotia (Music NS)
Music Newfoundland & Labrador (Music NL)
Music Yukon
Pacific Music Industry Association (Music BC)
Société pour la promotion de la relève musicale de l'espace francophone (SOPREF)

2. Schools and educational institutions that are (1) accredited by provincial authorities; (2) benefit students of music and journalism by way of (a) scholarships or (b) the purchase of musical instruments.

Cégep Beauce-Appalaches (QC)
Conservatoire de musique de Gatineau (QC)
Englehart Public School (ON)
Fanshawe College (ON)
Hartland High School (NB)
Henry Grube Education Centre (Kamloops, AB)
Lethbridge Community College
St-Francis Xavier University (NS)
University of Manitoba (MB)

3. Initiatives, including talent contests, for the production and promotion of Canadian local music and local musical artists, particularly emerging artists.

Talent contest ("battle of the bands" type of events)

Canadian Chinese Song-Writers Quest (BC & AB)
Cégeps en spectacle (QC)
Country Star Search (Global Country Rising Star program) (AB)
Francouvertes (QC)
Saskatchewan Star Search (SK)

Local, regional and national musical initiatives

Orchestras & Symphonies

Kamloops Symphony Orchestra (AB)
National Youth Orchestra of Canada (NYOC) (ON)
Orchestre symphonique des jeunes de Montréal (QC)

¹ <http://www.crtc.gc.ca/eng/GENERAL/ccdparties.htm>

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Orchestre Symphoniques des Jeunes de Lévis (QC)
Orchestra London (ON)
Toronto Symphony Orchestra (ON)
Vancouver Island Symphony (BC)

Choirs

Queens County Girls Choir (NS)
Amadeus Choir (Toronto, ON)
Moose Jaw Children's Choir & Festival Choir (AB)
Chœur philharmonique du Nouveau Monde (ON)

Festivals and concert series

Blueberry Bluegrass and Country Music Society Festival (Stony Plain, Alberta)
Burlington Sound of Music Festival (ON)
Festival d'été de Québec (QC)
Festival International de Jazz de Montréal (QC)
Festival de Musique de Bathurst (NB)
Festival Nelson (BC)
Hillside Festival (Guelph, ON)
Limestone City Blues Festival (Kingston, ON)
Nanaimo Blues Festival Society (Nanaimo, BC)
Oilsands Music Festival (Fort McMurray, AB)
Twin Rivers Music Festival (SK)
World Stage Festival (Toronto, ON)

Awards shows & conferences

L'ADISQ (les Rencontres)
East Coast Music Association (East Coast Music Awards)
Indian Art-I-Crafts
JUNOs
National Jazz Awards
Canadian Music Week (CMW)
North by Northeast (NXNE)

Foundations

British Columbia Institute of Technology (BCIT) Foundation (BC)
Fondation Wilfrid-Pelletier (QC)

Other music initiatives

Calgary Association for the Development of Music Education (AB)
Folk Arts Council of Winnipeg (MB)
Regent Park School of Music (Toronto, ON)
Maisons de la culture (Montréal, QC)

4. Independent parties dedicated to producing new spoken word content that would otherwise not be produced for broadcast

A new category. One example could be the recording of performances by Canadian stand-up comedians for broadcast.

5. Audio content initiatives further advancing the fulfillment of specific objectives of the Canadian broadcasting system as outlined in the Act

Aboriginal Voices Radio
Community Radio Fund

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Fondation Radio Enfant

VoicePrint - National Broadcasting Reading Services